HOBSON V. WILSON

NOV. 1981

VOL. 15

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MOTION FOR MODIFIED PRETRIAL SCHEDULE, STATUS CALL, AND HEARING ON OUTSTANDING DISCOVERY MATTERS

Plaintiffs move the court for an order (1) extending from November 9 to November 12, 1981 the date for submission of the parties' joint statement regarding exhibits; (2) setting a status call prior to the pretrial conference November 13; and (3) setting a hearing on outstanding discovery matters simultaneous with the status call.

In support of this motion plaintiffs rely on the accompanying memorandum.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MEMORANDUM IN SUPPORT OF
MOTION FOR MODIFIED PRETRIAL SCHEDULE,
STATUS CALL, AND HEARING ON
OUTSTANDING DISCOVERY MATTERS

Due to delays in the parties' preparation of pretrial briefs three additional days are needed for the parties to prepare their joint statement on exhibits. A status call, moreover, would be desirable to discuss a final schedule of pretrial proceedings. Finally, plaintiffs, simultaneously with this motion, are filing another motion to compel discovery and for sanctions as a result of the District of Columbia defendants continuing failure to produce documents from the internal police department investigation of intelligence division activities. A prompt hearing to resolve this and other outstanding discovery matters, therefore, is also needed.

Respectfully sumbitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter having come before the Court on plaintiffs' Motion for Modified Pretrial Schedule, Status Call, and Hearing on Outstanding Discovery Matters, and it appearing that this motion should be granted, it is this _____ day of November, 1981

ORDERED as follows:

(1) The parties shall have until November 12, 1981 to submit the joint statement on exhibits specified in the pretrial order; and

(2) The court will hold a status call and hearing on outstanding discovery matters on November , 1981 at _____am/pm in courtroom 3.

_____
UNITED STATES DISTRICT JUDGE

Certificate of Service

I certify that a copy of the foregoing Motion for Modified Pretrial Schedule, Status Call, and Hearing on Outstanding Discovery Matters, accompanying memorandum, and proposed order was personally served this 9th day of November, 1981 on David White, Civil Division, Department of Justice, Washington, D.C. 20530 and Laura Bonn, Assistant Corporation Counsel, District of Columbia Building, 14th & E Streets, N.W., Washington, D.C. 20004.

Daniel M. Schember

Daniel M. Schember

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 10th day of November, 1981 from the deposition of Mike Canfield held at 1712 N Street, N.W., Washington, D.C. 20036 on August 5, 1981:

Number of tapes of deposition: 1

Number of exhibits: 0

S. E. McNeil

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 10th day of November, 1981 from the deposition of Richard S. Brooks held at United States Courthouse, Washington, D.C. on August 13, 1981:

Number of tapes of deposition: 1

Number of exhibits: 0

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 10th day of November, 1981 from the deposition of John J. Zelloe held at 1712 N Street, N.W., Washington, D.C. 20036 on August 11, 1981:

Number of tapes of deposition: 1

Number of exhibits: 0

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 10th day of November, 1981 from the deposition of Melvin A. Winkelman held at 1712 N Street, N.W., Washington, D.C. 20036 on August 14, 1981:

Number of tapes of deposition: 1

Number of exhibits: 2

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 10th day of November, 1981 from the deposition of Robert L. Shackleford held at 2111 Florida Avenue, N.W., Washington, D.C. on July 28, 1981:

Number of tapes of deposition: 1

Number of exhibits: 5

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 10th day of November, 1981 from the deposition of Garrett T. Kirwin, Jr. held at 1712 N Street, N.W., Washington, D.C. 20036 on August 7, 1981:

Number of tapes of deposition: 1

Number of exhibits: 3

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

NOTICE OF FILING

The following items were filed with the Court this 10th day of November, 1981 from the deposition of Thomas I. Herlihy held at 1712 N Street, N.W., Washington, D.C. on August 3, 1981:

Number of tapes of deposition: 1

Number of exhibits: 1

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Attorneys for Plaintiffs

Certificate of Service

I certify that a copy of the foregoing Notices of Filing of Shackleford, Zelloe, Winkelman, Brooks, Herlihy, Kirwin, and Canfield was hand-delivered to David White, Civil Division, Department of Justice, Washington, D.C. 20530 and Laura Bonn, Assistant Corporation Counsel, District Building, 14th & E Streets, N.W., Washington, D.C. 20004 this 10th day of November, 1981.

J. E. McNeil

J. E. McNeil

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MOTION FOR RECONSIDERATION

Plaintiffs respectfully move this Court to reconsider its ruling that the three-year District of Columbia statute of limitations applies to the FBI defendants in this case. In support of this motion plaintiffs rely on the attached memorandum.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MEMORANDUM IN RESPONSE TO ORDER DATED OCTOBER 29, 1981

This Court ordered plaintiffs to file a memorandum indicating the basis of their claim to the benefit of the doctrine of fraudulent or deliberate concealment on the present record and their position as to whether any factual issue is raised for decision by the Court or by a jury.

The paragraphs below respond to the Court's order. In addition, this memorandum supports plaintiffs' motion for reconsideration of the Court's ruling that the three-year District of Columbia statute of limitations applies to the FBI defendants in this case.

I. THE LAW OF THE CASE DOCTRINE ALLOWS THE RECONSIDERATION OF THE COURT'S RULING THAT THE THREE-YEAR DISTRICT OF COLUMBIA STATUTE OF LIMITATION APPLIES TO THE FBI DEFENDANTS.

In its October 29, 1981 order, this Court stated that plaintiffs were asking the Court to revise the decision of November 9, 1981 which had been made by Judge Pratt, concerning the applicability of the statute of limitations. The defendants had argued that the November 9, 1981 decision was the "law of the case" implying that it was therefore immutable. The Court went on to say that

> [t]he developments in the law governing use of local procedure rules in direct constitutional actions since this Court's decision in November, 1979, perhaps highlighted by Carlson v. Green, 446 U.S. 14 (1980), do not, however, permit the Court to reconsider the 1979 decision that 12 D.C. Code § 301(8) applies to this case.

The "law of the case" is a rule of administrative convenience and does not limit the power of the Court. Naples v. U.S., 123 U.S.

App. D.C. 292, 359 F.2d 276 (1966); Shaefer v. First National Bank of Lincoln, 509 F.2d 1287 (7th Cir. 1975); U.S. V. Fuller, 277 F.Supp. 97 (D.C.D.C. 1967), affirmed 139 U.S. App. D.C. 375, 433 F.2d 533 (1970).1/

> In the interest of getting a case finally adjudicated, however, a court should normally adhere to its prior rulings. This is particularly true as to rulings of a procedural and nonjurisdictional nature, especially when the issue is not of great significance and it is more important that the point be settled than how it is settled. On the other hand when the issue is jurisdictional, or of a substantial nature, the court may with greater propriety reconsider a prior ruling. [Footnotes omitted.] [Emphasis added.]

1B Moore's Federal Practice ¶0.404 page 452. Indeed, the Court of Claims has stated that where a party to an action raises serious objections to the soundness of a first decision, the Court, in all but special circumstances, should reexamine its first decision as a prerequisite to its implementation of the law of the case. William G. Roe and Company v. Armor and Company, 414 F.2d 862, 188 Ct. Cl. 512 (1969).

Morrow v. Dillard, 580 F.2d 1284, 1290 (5th Cir. 1978) summarizes the exceptions to the doctrine of law of the case. There are three exceptions: (1) where a subsequent trial produces substantially different evidence (2) where "a controlling authority has since made a contrary decision of the law applicable to such issues" and (3) where prior decision was "clearly erroneous and would work manifest injustice." See also Shaefer, supra 2/ Industrial Workers of the World v. Clark, 128 U.S. App. D.C. 165, 385 F.2d 687, cert. den. 390 U.S. 948 (1967); Nables, supra; Daly v. Volpe, 376 F.Supp. 987 (WD Wash. 1974), affirmed 514 F.2d 1106

1/ The rule that the law of the case is not a limit to the Court's power is equally applicable to the reconsideration of an order of one federal district court judge by another federal district court judge in the same case. Van Voorhis v. D.C., 240 F.Supp. 822 (D.C.D.C. 1965); LeRoy v. Sabena Belgium World Airlines, 344 F.2d 266 (2nd Cir. 1965) cert. den. 382 U.S. 878 (1966); Shaefer, Id.

2/ In Shaefer the ruling that a state five-year statute of limitation applied to the action was held not to prevent a successor judge in the same litigation from holding that a three-year statute of limitations applied instead, in accordance with an intervening ruling by a court of appeals in other litigation.

(9th Cir. 1975); Poster Exchange, Inc. v. National Screen Service Corp., 362 F.2d 571 (5th Cir. 1966) cert. den. 385 U.S. 948(1967); Black Panther Party, supra.

Plaintiffs feel that the decision that the three-year D.C. statute of limitations is a decision of a substantial nature as, unless this Court finds that the statute was tolled by fraudulent or deliberate concealment, some, if not all, of plaintiffs' substantive claims may be barred. Furthermore, plaintiffs feel that this case falls squarely within the second and third exceptions to the law of the case doctrine as enumerated in Morrow above.

The second exception deals with the case where "a controlling authority has since made a contrary decision of the law applicable to such issues." This is not a requirement that a controlling authority make a decision that is squarely on point, merely that the decision concern law that is applicable to the issues. There has been a great deal of development in the area of the law which is applicable to the issue as to whether the three-year D.C. statute of limitations applies to the FBI defendants in this case, culminating with Carlson v. Green, a Supreme Court decision which, although it is not directly on point, does run contrary to the case law upon which this Court based its November 1979 decision.

The third exception deals with whether the erroneous application of the three-year D.C. statute of limitations would work manifest injustice against the plaintiffs who would be barred from bringing before the jury their legitimate claims concerning certain tortious acts by the FBI defendants. This is a sentence that answers itself. Although, arguably, plaintiffs would be able to have another trial at a later date, at which the claims could be brought once the court of appeals ruled that the three-year statute of limitations was not applicable, that series of events defeat the very purpose of the law of the case doctrine -- to

avoid unecessary delays in the prosecution of a case. The court always has the power to apply a different rule of law than it did at an earlier time in the same case in the interest of obtaining a just result. Naples, Id.

The law of the case doctrine, therefore, not only allows the Court to reconsider the November 1979 ruling that the D.C. statute of limitations applies, but policy and equity demand that the decision be reconsidered.

II. NO STATUTE OF LIMITATION APPLIES IN THIS CASE.

The Court stated that Carlson v. Green "is not itself authority, as plaintiffs argue, for avoiding local statutes of limitation in direct constitutional action." Plaintiffs do not maintain that Carlson v. Green standing alone can be cited as direct authority that local statutes of limitations should not be applied in direct constitutional actions against federal officials. Carlson v. Green does, however, represent a piece in a mosaic which leads to that conclusion.

None of the cases this Court can look to directly decide this issue either because the appropriateness of a local provision as applied to a federal claim was not considered, Smith v. Nixon, 606 F.2d 1183 (D.C. Cir. 1979), Fitzgerald v. Seamans, 553 F.2d 220 (D.C. Cir. 1977), Saffron v. Wilson, 481 F.Supp. 228 (D.D.C. 1979), or the case was distinguishable on some other grounds. Smith v. Nixon, ante (statue of limitation not applied so as to bar claim because tolling was found); Shifrin v. Wilson, 412 F.Supp. 1282 (D.D.C. 1976) (no federal defendants involved); Church of Scientology of California v. Foley, 640 F.2d 1335 (D.C. Cir. 1981) (federal employees sued on state claim only).

For actions based upon federal statutes, there has been a tendency to adopt local statutes of limitation where Congress has been silent. Courts using this approach have been careful to note that the state statute is applicable only insofar as it does not violate the Constitution, Roberts v. Wegmann, 436

U.S. 584,590 (1978), Burns v. Sullivan, 619 F.2d 99, 105 (1st Cir. 1980), or evidence hostility toward federal causes of action, Johnson v. Dans, 582 F.2d 1316, 1318 (4th Cir. 1978).

The weight of recent authority indicates that whatever may be the rule regarding statutory claims, Bivens claims against federal officials can not be circumscribed by state procedural rules.

In 1966, the Supreme Court suggested that application of a state limitations period should not be applied to "frustrate in anyimportant way" a significant federal goal. Auto Workers v. Hoosier Cardinal Corporation, 383 U.S. 696, 702 (1966). Later the Court noted that state law is not the exclusive guide to establishing limitations periods for federal actions, and that it may be displaced when its application would be inconsistent with the federal policy underlying the cause of action. Johnson v. Railway Express Agency, 421 U.S. 454, 465 (1975).

In Robertson v. Wegman, 436 U.S. 584, 592 (1978), where a limited application of a state law was upheld, the Court unequivocally warned state officials contemplating illegality that they must be prepared to face federal civil rights actions. The Court subsequently extended this warning to federal officials subject to Bivens-type actions. Carlson v. Green, 446 U.S. 14, 25 (1980).

State statutes of limitation are inappropriate measures for determining the time within which a constitutional tort claim may be brought against federal defendants. Statutes of limitation reflect value judgments as to the proper balance between the interest in protecting valid claims and the interest in preventing stale ones. Johnson v. Railway Express Agency, 421 U.S. 454, 463-64 (1975). State statutes of limitations are aimed at achieving this balance where state protected rights are concerned.

Different considerations apply where federally protected public rights are concerned -- especially when the actions that are being questioned were those of federal employees. The doctrine established by Erie Railroad Company v. Thompkins, 304 U.S. 64 (1938), and illuminated by Hanna v. Plumer, 380 U.S. 460 (1965), that where procedural rules are outcome determinative the state rule should be applied, is not directly applicable. The purpose of the Erie doctrine was to create uniformity within a state for state causes of action filed in the federal court because of diversity. The effect of applying Erie in this case would be to allow a state procedure to become federal substantive law -- thus subverting the purpose of the Constitution.

It is well established that constitutional rights must be completely vindicated. The Supreme Court concluded in the recent case of Carlson v. Green that complete vindication requires uniform treatment, at least so far as actions against federal officials are concerned. 446 U.S. at 24. Uniform treatment is impossible as long as the liability of federal agents depends upon where the wrong occurred.[3/] Id.

For the defendants in this case to escape liability merely because of the application of an inappropriate procedural device would be wholly to subvert constitutional policies and purposes.

III. IF THE DISTRICT OF COLUMBIA STATUTE OF LIMITATIONS APPLIES, IT WAS TOLLED BY DEFENDANTS' ACTS OF CONCEALMENT, AND NONE OF PLAINTIFFS' CLAIMS ARE BARRED.

The doctrine of deliberate concealment, which tolls the statute of limitations, and its companion, the due diligence discovery rule, can be stated as follows: where defendants have

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3/ This same action would currently be maintainable if it had arisen in New York, for example, where the general statute of limitations is six years. Civil Practice Law and Rules, Ch. 2.

concealed their wrongful acts, the statute of limitations is tolled until plaintiffs reliably learn, or through due diligence reliably should have learned, the defendants' identities and the other material facts establishing a litigable dispute and enabling intelligent prosecution of the claims. Fitzgerald v. Seamans, 180 U.S.App. D.C. 75, ___ , 553 F.2d 220, 228 (1977); Emmett v. Eastern Dispensary and Casualty Hospital, 130 U.S.App. D.C. 50, 56, 396 F.2d 931, 937 (1967).

Covert acts are "by nature secret," and a policy or practice of preserving their secrecy constitutes deliberate concealment.[4] Smith v. Nixon, 196 U.S.App. D.C. 276, ___ , 606 F.2d 1183, 1191 (1979).

Moreover, the identity of the responsible defendants, or category of defendants, is a material fact, and concealment of their identity tolls the statute of limitations even if all other material facts are known. In Fitzgerald, supra, White House and Air Force officials conspired to retaliate against appellant for his congressional testimony. Since appellant knew of the conspiracy and the Air Force involvement prior to the limitations period his claims against all Air Force officials were held barred. A different result was reached regarding a White House official because he was "a person of influence in a different center of power" and appellant had no early knowledge of White House involvement in the conspiracy. Fitzgerald, supra, 553 F.2d at 229.

In addition to the identity of the proper defendants, the "'critical facts' of injury and cause" also must be known or available through due diligence before the statute of limitations

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[4] It is not true, as defendants claim, that concealment is not deliberate absent a pre-existing duty to disclose. Smith expressly rejected this argument. 606 F.2d at 1190.

begins to run. Stoleson v. United States, 629 F.2d 1265, 1269 (7th Cir. 1980), citing United States v. Kubrick, 444 U.S. 111 (1979).

The information known or available to plaintiffs regarding injury, its cause, and the responsible defendants must be reliable and sufficient to support more than a suspicion of the basis for legal action. Indeed, the due diligence discovery rule is intended to prevent plaintiffs from "rush[ing] to litigation on bare suspicion." 5/ Fitzgerald, supra, 553 F.2d at 228. The case law, in fact, indicates that far more than suspicion is necessary to start the statute running.

In Stoleson, supra, a two-year statute of limitations applied to plaintiff's claim she was harmed by occupational exposure to nitroglycerine. Prior to the limitations period appellant (1) had suffered a heart attack and "suspected a connection between her heart problems and her working conditions"; (2) had "requested that she be reassigned to a work area free of nitroglycerine"; (3) had "read in a union newspaper an article suggesting a sudden withdrawal from nitroglycerine exposure may cause anginal chest pains"; and (4) had consulted an occupational safety inspector who told her "that he believed her heart problems were caused by exposure to nitroglycerine." Stoleson,

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5/ In Fitzgerald the court held appellant's claims barred because:

> He not only had a strong suspicion of the "real" reason for his termination, he knew that immediately after his testimony he was ostracized within the Air Force, his duties were shifted, and he was given no new responsibilities; he knew of the Hicks memorandum which showed that the RIF was only a strategem for accomplishing his removal; he knew of the investigation of him . . . and the false charges of inadequate job performance, security violations, and conflicts of interest that were made against him to Congress, both in the 1969 testimony by Secretary Seamans and by accusations in the investigatory file provided to Congress. In view of the diligence feature of the discovery doctrine, this was sufficient to put appellant on notice of the conduct by some Air Force officials which is now asserted as a basis for the law suit.

Fitzgerald, supra, 553 F.2d at 228-229.

supra 629 F.2d at 1267. Despite appellant's knowledge of these facts the court held the statute did not run until appellant was examined by a specialist who "concluded that her cardiovascular problems were related to nitroglycerine exposure." Id.

The court so held because appellant's personal physicians had disputed the connection between nitroglycerine and the heart condition and because "neither clinical cardiology tests nor medical journals had previously discussed or described the phenomenon of angina among workers regularly exposed to nitroglycerine." Id. The court, following the Supreme Court decision in Kubrick, noted that the statute begins to run when the plaintiff "is no longer at the mercy of a defendant's specialized knowledge," the point at which the plaintiff "need only inquire of other professionals, including lawyers, whether he has been legally wronged." Stolesen, supra, 629 F.2d at 1269-70. The court, therefore, rejected the government's argument that appellant's suspicion triggered the statute of limitations:

> A layman's subjective belief, regardless of its sincerity or its ultimate vindication, is patently inadequate to go to the trier of fact. Therefore, had Mrs. Stolsen sought competent legal advice, she would have been informed quite correctly that she had no claim against the Government. The Supreme Court was careful to note that had Kubrick timely sought medical and legal advice, he would have discovered that his physician had been negligant.

Id., at 1270. The court further held that filing suit on the basis of her own suspicions, the union newspaper article, or the advice of the occupational safety specialist would have been "futile":

> Even armed with the occupational safety inspector's opinion and the union newspaper article, the suggestion that Mrs. Stolsen had a claim that she could judicially enforce is implausible.

Id.

A similar result was reached in Peck v. United States, 470 F.Supp. 1003 (S.D.N.Y. 1979). In that case plaintiff sued FBI agents for conspiring with police and vigilantes to attack "Freedom Riders" upon their arrival in Birmingham, Alabama. Defendants argued plaintiffs' claims were barred by the statute of limitations because the presence of an FBI informant among the vigilantes and the fact the informant had called the FBI prior to the attack had been revealed in state trial transcripts, and because the identity of the FBI informant had been revealed in three New York Times articles published at the time of the trial. The court rejected the government's argument:

> Even if we were to hold that plaintiff was on notice at least as to the newspaper accounts of the trial we could not say that on that basis alone plaintiff, in the exercise of due diligence, should have discovered the government's alleged wrongful acts. Nor should the news articles have put plaintiff on inquiry to investigate the trial transcripts. There is nothing in the news reports to suggest that Rowe [the informant] was anything more than an observer at the Birmingham incident. Certainly there was nothing there to suggest that the trial transcripts might indicate that the FBI, through Rowe, had prior notice of the planned attack. . . . Moreover, the transcripts would not have given plaintiff notice of the 1985 (3) conspiracy alleged here.

Peck, supra, at 1020.

Similarly, in Fontana v. Aetna Casualty and Surety Company, ___ U.S.App. D.C. __,363 F.2d 297 (1966), an action by an insurance carrier to recover money awarded under a false claim, the plaintiff, prior to the limitation period, had been informed by defendant's business partner that the claim had been faked. The court held this information was insufficient to start the running of the statute of limitations because plaintiff remained effectively unable to investigate the case:

> If it was made, Clark's statement to Shortt that Fontana had "faked" the claim. . . was, of course, nothing more than his unsupported conclusion concerning the ultimate fact of Fontana's fraudulent conduct; he did not tell Shortt in what manner Fontana had faked the claim, thus the hearsay information given to Aetna

> by Shortt contained no statement of fact which the insurance company could investigate.[6]

Plaintiffs' principal claims against the FBI defendants involved covert actions deliberately concealed in accordance with official FBI policy. In a memorandum establishing the New Left Counterintelligence Program the Bureau stated

> that under no circumstances should the existence of the program be made known outside the Bureau and appropriate within office security should be afforded this sensitive operation.

Exhibit C to plaintiff's Opposition to Motions by Defendants Brennan, Moore, Grimaldi, Pangburn, Jones and Webster for Judgment on the Pleadings, filed October 5, 1981. FBI anonymous mailings and use of informants were similarly concealed.

In addition to covert actions plaintiffs challenge overt acts by FBI agents: interviews conducted for the purpose of intimidation. Though these interviews were openly conducted, the material facts rendering them actionable -- the absence of legitimate purposes for the interviews and the illicit motive for them -- were deliberately concealed as part of the secrecy of COINTELPRO. See Exhibits 15 and 16 to plaintiffs' pretrial brief.

It was not until the Church Committee reports were published in April 1976 that the material facts concerning plaintiffs' claims were revealed. A Justice Department press release in November 1974 also revealed some facts concerning the FBI's Counterintelligence programs. In response to defendants' interrogatories plaintiffs have stated under oath that it was

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[6] The facts in Fontana, Peck and Stoleson contrast markedly with those in Hunt v. Bittman, 482 F.Supp. 1017 (D.D.C. 1980). There the court held a legal malpractice claim barred where court records, plaintiff's published memoirs, and newspaper articles read by plaintiff indicated very early his detailed knowledge of the specific facts forming his claims.

these materials which informed them of the basis for their lawsuit. Plaintiff Julius Hobson's response to First Set of Interrogatories by Defendants Kelley, Stames, Kunkel, McDermott, O'Connor, Sawyer, Yates, Feuer and Rarrity, filed October 7, 1976.[7/]

Plaintiffs in their depositions stated the following facts they suspected or knew more than three years prior to filing of the complaints, as well as related facts learned within the limitations period.

Sam Abbott. -- Mr. Abbott testified (1) that he had read the articles by Robert Wall published in the New York Review of Books and Washington Post Sunday Potomac Magazine (Abbott deposition at 6); (2) that prior to 1973 he and others suspected Steve Wilcox was an informant because he "was always there, always working, no visible means of income, but travelled all over to meetings," that Steve Wilcox disappeared after he was confronted and that documents received under the Freedom of Information Act (within the limitation period) confirmed that Steve Wilcox was an informant (Abbott deposition at 8-10); (3) that "it was always taken as a given," and that he "had suspicions" that FBI informers were attending meetings (Abbott deposition at 24-25); and (4) that in 1969 or 1970 a man came to his office, said he wanted to check the phones, put an instrument on it, and said the phone was tapped. (Abbott deposition at 32.)

Abe Bloom -- In his deposition Mr. Bloom testified (1) that he first decided to consider a lawsuit in December 1974 based on newspaper revelations concerning the CIA (Bloom deposition at 5-6); (2) that during the late 1960's and early 1970's "people. . . were always talking. . . that the phones were probably tapped" (Bloom deposition at 15); (3) that a break-in at the Washington

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[7/]The pertinent portion of plaintiff Julius Hobson's response was incorporated by reference in all other plaintiffs' responses to defendants' interrogatories.

Peace Center occurred "about 1970" and that it was believed at the time the break-in was committed by persons working for the FBI (Bloom deposition at 16); (4) that documents received from the FBI (within the limitations period) caused him to believe that a political break-in could have occurred at his home (Bloom deposition at 17); (5) that at some time in the period 1969 to 1971 a break-in occurred at 1029 Vermont Avenue, and that it was believed at the time that the FBI committed the break-in but that no information specifically concerning that break-in confirmed his belief of FBI involvement (Bloom deposition at 20); (6) that he "had a feeling" that his mail was intercepted because a friend of his in 1970 had received a letter which apparently had been opened because it contained a note having nothing to do with the letter and that seemed strange (Bloom deposition at 23); (7) that nothing occurred with respect to his own mail which lead him to believe it was being tampered with unlawfully (Bloom deposition at 26); (8) that in the late 1960's he was approached by FBI agents and asked to provide them information (Bloom deposition at 28-29); (9) that he was suspicious that persons urging violent actions at meetings were agents (Bloom deposition at 31-32); (10) that he had seen New York Review of Books and Washington Post Potomac Magazine articles by Robert Wall and noted in them information that the FBI had produced a false letter (Bloom deposition at 37-38); and (11) that early in the period 1967 to 1974 he had suspicions about an anonymous letter but that no information he has ever received connects the FBI or other authorities to the anonymous letter (Bloom deposition at 42-45).

Reginald Booker -- At his deposition Mr. Booker testified (1) that he considered filing suit as early as 1968 because he had "discovered that the FBI was engaged in illegal activities in violation of my rights under the constitution" (Booker deposition at 13); (2) when asked what occurred before 1967 which lead him to consider bringing suit, that "It is generally known among

those people in this country who have participated in the civil rights movement that the government by way of the FBI and the Justice Department was engaged in acts which are in conflict with the constitution" (Booker deposition at 14); (3) that at some point he read in the public news media statements by Agent Wall "that the Black United Front was a prime target of the FBI for the commission of acts in violation of the constitution" Booker deposition at 33); (4) that any additional information in support of his allegations of infiltration was learned when he obtained his files under the Freedom of Information Act (within the limitations period) (Booker deposition at 34); (5) that he believed he was the subject of FBI electronic surveillance because of his "general knowledge" of the general policy of the Federal Bureau of Investigation. (Booker deposition at 34-35); (6) that sometime between 1969 and 1972 he suspected documents of the Emergency Committee on the Transportation Crisis were missing due to intervention by the FBI (Booker deposition at 42); (7) that "since the inception or the initial formation of the Black United Front" it "was a common belief among members of the organization" that the Black United Front was a victim of break-ins or surreptious entries by the FBI (Booker deposition at 43); (8) that "when we obtained our files under the Freedom of Information Act there was information in the files on Justice Department memos that related to the Black United Front that could only have been obtained by thievery because certainly the Black United Front was not using Justice Department stationery" (Booker deposition at 44); (9) that sometime, perhaps between 1971 and 1974, records were taken from the office of Government Employees United Against Discrimination and that all members in the organization suspected at the time that the FBI was involved "because of the fact that this follows the FBI's policy and pattern of illegal activities" (Booker deposition at 46-47); (10) that sometime in 1971 to 1973 he believed that a burglary of his home was committed by the FBI "because it is the pattern and

practice of the FBI directed against individuals like myself who were engaged in lawful political activity and who at times questioned activities of the government and the government for whatever its reasons directed these kinds of activities towards us" (Booker deposition at 49); (11) that in December of 1975 he learned from his neighbors that a big burly white male had attempted to break into his apartment and that he had learned from his Justice Department files that FBI agents had visited the resident manager, thus leading him to conclude that the FBI had attempted the break-in. (Booker deposition at 49-50); (12) that in 1969 or 1970 he received telephone calls asking him if he wanted to obtain dynamite to blow up the construction site of the Three Sisters Bridge and that he attributed those calls to agents of the FBI "because it has been a policy of the FBI to urge groups to engage in illegal acts" (Booker deposition at 58); and (13) that he "received information from anonymous sources"; and that "it was common knowledge in the black community among those who participated in different civil rights and civic organizations that the Black Buffers or Project Progress was a government spy program," that he received documents that indicated "where the money came from" for Project Progress, that the head of the program denied Mr. Booker's allegation, and that "it was common knowledge that the Black Buffers were paid government informants" (Booker deposition at 72-74).

The Rev. David Eaton -- At his deposition David Eaton testified (1) that he considered filing suit against the Metropolitan Police Department for having beaten him physically in 1968 (Eaton deposition at 12-13); (2) that as a result of this beating incident "I began to notice more what was happening around me in terms of persons involved in surveillance -- my telephone calls, for an example, and things of that nature" (Eaton deposition at 13-14); (3) that at some point around 1975 or 1976 he conceived the idea of actually filing suit. (Eaton deposition at 14); (4) that in the late 1960's he began to

hear clicks on the phone associated with his conversations with Stokely Carmichael, noticed a change in volume after the clicks, and was told by an electrician that his phone might be tapped. (Eaton deposition at 17-18); (5) that in the late 1960's and early 1970's "I know I was being personally followed every time Mr. Stokely Carmichael was in town";and that "I have no reason to believe that a private citizen just decided to follow me so I assumed that it was related to surveillance" (Eaton deposition at 19-20); (6) that he had no information which led him to believe that those following him were FBI agents (Eaton deposition at 23).

Tina Hobson -- In her deposition Ms. Hobson testified (1) that as early as 1969 she and others discussed the possibility of having a lawsuit against "the kind of behavior on the part of the government that was certainly obvious in those days, . . . this kind of surveillance." (Hobson deposition at 9); (2) that there was no particular event which finally motivated the filing of the suit and that "it was just one of the priorities on our list and we just got down to that priority." (Hobson deposition at 10); (3) that the information which led her to believe that private meetings were infiltrated was "the FBI file that we received under the Freedom of Information Act" (Hobson deposition at 28); (4) that she believed burglaries of her husband's office were committed by the FBI, the Metropolitan Police Department or the CIA "because nothing of value was taken and there were things of value around . . . and it was strictly the carbon ribbon and the carbon paper found gone," and that she "suspected. . .at that time" that the FBI was involved because "we couldn't figure out who else was interested unless it was the CIA or somebody like that" (Hobson deposition at 37-38).

Richard Pollock -- At his deposition, Mr. Pollock testified (1) that he first considered the idea of filing suit in 1975 (Pollock deposition at 15-16); (2) that the apartment of an associate of his was broken into in 1971 and that he had "a suspicion at that time that it had been done by the FBI" (Pollock deposition at 31); (3) that he was associated politically with Guy Shaeffer and that he (Mr. Pollock) was informed in 1974 or 1975 of a suspicion that Mr. Shaeffer was a law enforcement official (Pollock deposition at 45); (4) that in the summer of 1973 he heard John Dean testify before the Watergate Committee and relay information he (Mr. Pollock) had discussed in jest over the phone. (Pollock deposition at 53); (5) that from mid-1971 through 1974 his mail service was poor, unlike that of his neighbors, and that he therefore suspected some agency other than the postal service was the cause (Pollock deposition at 59); (6) that from 1970 to 1972 he noticed cars appearing to have police radios and antennas stationed in front and back of his house and that his "suspicion was that it was the FBI, only because of the manner of dress -- mainly because the manner of dress, the appearance, that I had drawn a conclusion that it was FBI." (Pollock deposition at 62-63).

Arthur Waskow -- At his deposition Mr. Waskow testified (1) that in the year statements by Robert Wall were carried in the press Robert Wall personally gave Mr. Waskow "information about his [Mr. Wall's] own actions in regard to the Institute for Policy Studies" (Waskow deposition at 26); (2) he learned that "FBI agents. . . were ordered to investigate anti-war activists" from "a number of congressional hearings on activities of the FBI" (Waskow deposition at 27); (3) that he did not know whether Robert Merritt, an FBI informant, had revealed his identity as an informant to an Institute for Policy Studies attorney in 1971 (Waskow deposition at 35); (4) that he did not know whether Mr. Merritt told another IPS attorney in 1972 that he (Mr. Merritt) had been an informant for the FBI (Waskow deposition at 36); (5) that he

believed he was a target of a mail cover due to having seen congressional committee reports (Waskow deposition at 50); (6) that he believed false information about him was furnished the press by the FBI due to "rumor" that an Evening Star reporter was a conduit for FBI deliverate leaks and that "I think some of it has since become more solid information from the Congressional hearings, but it was nothing but scuttlebutt". (Waskow deposition at 55-56).

Washington Area Women Strike for Peace -- At her deposition on behalf of Women Strike for Peace, Edith Villastrigo testified (1) that the source of her information concerning infiltration, wiretapping, and mail opening was the Report to the President by the Commission on CIA Activities (published 1975) and files obtained from the FBI under the Freedom of Information Act (Villastrigo deposition at 25); (2) that it was after 1975 that she received the Freedom of Information Act files (Villastrigo deposition at 27); (3) that she and others associated with WSP suspected surveillance at the time it occurred because (a) "we were always photographed individually by certain photographers, which was very suspicious," (b) "at our meetings we would have certain disruptions which we suspected might have been caused by infiltrators although we did not know actually who they were at the time," (c) "we had suspicion that our telephones were tapped because of certain noises we heard on our phones which we couldn't hear on other people's phones" (Villastrigo deposition at 50); (4) that the suspicion of infiltration "was confirmed later when we saw our files that indeed there were infiltrators" (Villastrigo deposition at 51-52); (5) that she could not "pinpoint" the time at which she began to believe there was infiltration but "it was a general feeling, particularly when we saw the demonstrations, the way we werebeing photographed and then at times meetings would sort of break up and so on. That would create a

suspicion" (Villastrigo deposition at 52); (6) that in 1968 and 1969 she spoke with others associated with WSP and learned "that they felt their phones were tapped" (Villastrigo deposition at 54); (7) that the noise on the phone that caused her to believe her phone was tapped "was like a whirring noise" and that the noise was still heard on her phone (Villastrigo deposition at 55); (8) that she believed a break-in at the WSP office may have been committed by the FBI because the "general suspicion that we were under surveillance certainly made us feel that might have happened" (Villastrigo deposition at 58); (9) that one time "some young people walked in and terrorized our women, and I don't know whether it was just young people trying to do their thing or whether it was FBI" (Villastrigo deposition at 64); (10) that she received no "particular information" confirming her suspicion of FBI involvement in the WSP office break-in "but the general belief after we knew we were being infiltrated sort of confirmed our feeling that, our original feelings and general belief that we were, in fact, broken into by the FBI" (Villastrigo deposition at 65); (11) that the feeling the FBI was involved in the break-in was confirmed by documents received under the Freedom of Information Act indicating WSP had been under surveillance (Villastrigo deposition at 66); (12) that in 1971 she learned an FBI agent had approached a woman associated with WSP and asked her about a WSP trip to Canada and whether she would continue to meet with the FBI (Villastrigo deposition at 66-68).

Washington Peace Center -- Representatives of the Washington Peace Center have not been deposed. Plaintiff Washington Peace Center stated in its response to the federal defendants interrogatories in April, 1981 (1) that the Peace Center became aware of a break-in at its office in July of 1973; (2) that staff

members at the Peace Center experienced disruptive phone calls canceling meetings; and (3) that staff members of the Peace Center learned through newspaper articles and files released to Abe Bloom and the Peace Center that disruptive tactics similar to the telephone calls were part of Cointelpro.[8/]

The facts presented above do not support a determination that plaintiffs, prior to July, 1973 (three years prior to the filing of their suit), knew or should have known the material facts forming the basis of their claims.

The depositions and the 1972 publications of Robert Wall make no mention of the FBI's efforts (1) to curtail success of the Poor People's Campaign; (2) to disrupt logistical arrangements and communications at, and to ridicule, the 1969 counter-inaugural demonstrations; (3) to influence American University students to oppose the legitimate student newspaper and anti-war demonstrations; and (4) to sow dissension among the members of the New Mobilization Committee Steering Committee.

Nor do the depositions indicate plaintiffs knew material facts establishing the basis for a claim of illegal surveillance. In the 1960s "twenty separate units attached to 10 agencies were, by the end of the decade, engaged in domestic intelligence activities." F. Donner, The Age of Surveillance at 28 (1980). Prior to the enactment of the Privacy Act in 1974 and the 1974 amendments to the Freedom of Information Act plaintiffs had no effective means

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[8/] In addition to the Washington Peace Center, all other plaintiffs stated in their April, 1981 interrogatory responses facts similar to those elicited during their depositions.

of investigating whether an agency was maintaining dossiers on political activists. J.O'Reilly, Federal Information Disclosure (1981).[9]

The material facts needed to establish a claim of illegal surveillance include (1) that the surveillance was conducted for the purpose of suppressing constitutional rights; (2) that it was conducted for a purpose unauthorized by statute or executive order; (3) that the surveillance employed intrusive techniques or intrusions into private meetings; and/or (4) that the scope, intensity, or duration of the surveillance exceeded that necessary to the accomplishment of any legitimate law enforcement purpose.

Plaintiffs' depositions indicate knowledge of none of these material facts. At most, the depositions indicate suspicion of a claim that, if filed, would have been dismissed under Laird v. Tatum, 404 U.S. 1 (1972). Moreover, the authorities discussed earlier clearly indicate that a plaintiff's mere suspicion, even of material facts, is not sufficient to start the running of the statute of limitations.[10]

Finally, the 1972 articles by Robert Wall do not eliminate the "head tax" disruption claim from plaintiffs' case. Plaintiff Waskow was directly affected by this FBI disruption. His deposition indicates he did not read the Wall articles. He merely discussed matters concerning the Institute for Policy Studies with Robert Wall. The claim, therefore, cannot be deemed barred as to plaintiff Waskow. Moreover, the allegations in the Robert Wall articles were an insufficient basis for intelligent investiga-

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9/ After 1974 plaintiffs did use the Privacy and Freedom of Information Acts to investigate whether a number of agencies had conducted surveillance of them. Exhibit A attached to this memorandum.

10/ Significantly, discovery and investigation through this litigation of many of plaintiffs' suspicions, including those regarding wiretaps, break-ins, and mail tamperings, has not led to assertable claims against the FBI defendents.

tion and prosecution of the claims of other plaintiffs regarding this matter. When plaintiffs sought discovery from the FBI premised on the allegations in the Robert Wall articles the FBI's response indicated no evidence or knowledge of the allegations. Defendant Webster's Response to Plaintiff's Tenth Set of Interrogatories, filed March 9, 1981 at Response 1. Moreover, several independently actionable FBI acts of disruption related to the "head tax" were not mentioned in the Robert Wall articles, including the efforts to involve the National Welfare Rights Organization, to tarnish the image of Julius Hobson, and to enflame prejudice through a racist, anonymous leaflet. Exhibits S-Z to plaintiffs' opposition to the federal defendants motion for judgment on the pleadings, filed October 5, 1981. These other aspects of the matter were discovered through research of documents placed in the FBI Reading Room after suit was filed. Again, prior to the Freedom of Information Act amendments of 1974 and the enactment of the Privacy Act that same year no effective means of investigating Robert Wall's allegations existed.

The Court therefore, should at this time hold plaintiffs' claims not barred by the statute of limitations.

Respectfully submitted,

Anne Pilsbury
Anne Pilsbury
17 Danforth Street
Norway, Maine 02468

J. E. McNeil
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Of Counsel:

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Executive Director
American Civil Liberties
Union Fund of the
National Capital Area
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Washington, D.C. 20003
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Exhibit A

THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

Anne Pilsbury, Esquire
Cohen & Noterman
1523 L Street, N.W.
Washington, D.C. 20005

11 MAR 1977

Dear Ms. Pilsbury:

This is in further response to the pending administrative appeal of your client, Abraham Bloom, from the partial denial by Director Clarence M. Kelley of the Federal Bureau of Investigation of Mr. Bloom's request for access to records pertaining to the Washington Area Peace Action Coalition and its predecessor organization, the Washington Mobilization Committee.

I have now been advised that, as the result of discussions between Bureau personnel and members of the staff of my Office of Privacy and Information Appeals, a release of additional records either has been or soon will be made to you directly by the F.B.I. In light of this fact, and after careful consideration of your client's appeal, I have decided to affirm the modified action of Director Kelley.

You are now receiving almost all substantive information within the scope of Mr. Bloom's request. The materials which will continue to be withheld are considered by me to be exempt from mandatory release pursuant to one or more of the following statutory provisions: 5 U.S.C. 552(b)(2), (7)(C) and (7)(D). These pertain to certain purely internal agency practices and to investigatory records compiled for law enforcement purposes, the release of which would, respectively, constitute an unwarranted invasion of personal privacy and disclose the identities of confidential sources. There are no reasonably segregable, nonexempt portions of any of the withheld materials that can be released to you. I do not consider that release of any of the withheld materials as a matter of my discretion would be appropriate.

With respect to your client's request, in effect, for a "Vaughn v. Rosen index," it has been and remains the consistent position of this Department that such are not required at the administrative stage of processing requests under the Freedom of Information Act. Their preparation, even in cases such as this one where very little substantive information is being withheld, would be unduly burdensome and disruptive of departmental operations.

If your client is dissatisfied with my action on this appeal, judicial review thereof is available to him in the United States District Court for the judicial district in which he resides, or in which he has his principal place of business, or in the District of Columbia, which is also where the records he seeks are located.

Very truly yours,

RICHARD L. THORNBURGH
Acting Deputy Attorney General

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

February 24, 1977

Mr. Abraham Bloom
3313 Harrell Street
Wheaton, Maryland 20906

Dear Mr. Bloom:

Receipt of your payment of fees as previously requested is acknowledged.

Enclosed herewith are 124 pages of information from our central records which we are authorized to release to you. These documents constitute the final disclosure to be made to you in compliance with your Freedom of Information Act (FOIA) request.

Excisions have been made from the enclosed documents in order to protect materials which are exempt from disclosure by the following subsections of Title 5, United States Code, Section 552:

(b)(1) information which is currently and properly classified pursuant to Executive Order 11652 in the interest of the national defense or foreign policy;

(b)(2) materials related solely to the internal rules and practices of the FBI;

(b)(7) investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of the personal privacy of another person;

(D) reveal the identity of an individual who has furnished information to the FBI under confidential circumstances or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means.

You have thirty days from receipt of this letter to appeal to the Attorney General from any denial contained herein. Appeals should be directed in writing to the Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D. C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Sincerely yours,

Clarence M. Kelley
Director

Enclosures (17)

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

December 1, 1976

Mr. Abraham Bloom
3313 Harrell Street
Wheaton, Maryland 20906

Dear Mr. Bloom:

Receipt of your payment of fees as previously requested is acknowledged.

The enclosed 166 pages from our central records are subject to disclosure to you in accordance with Freedom of Information-Privacy Acts (FOIPA). These documents represent the second portion of material determined to be pertinent to your request and should not be construed as a completion of processing. We shall continue to process documents for release to you.

Excisions have been made from the enclosed documents and other documents have been withheld in their entirety in order to protect data which is exempt from disclosure by the following subsections of Title 5, United States Code, Section 552:

(b)(2) material related solely to the internal rules and practices of the FBI;

(b)(7) investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of the personal privacy of another person;

(D) reveal the identity of an individual who has furnished information to the FBI under confidential circumstances or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means.

Mr. Abraham Bloom

You have thirty days from receipt of this letter to appeal to the Attorney General from any denial contained herein. Appeals should be directed in writing to the Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D. C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Sincerely yours,

Clarence M. Kelley
Director

Enclosures (52)

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

5 FEB 1976

Mr. Abraham Bloom
Washington Area Peace Action Coalition
3313 Harrell Street
Wheaton, Maryland 20906

Dear Mr. Bloom:

This is in final response to your request dated 5 July 1975. As noted in our partial response of 29 October 1975, we still had some processing to complete, and we sought to assure you that we were doing our best under the circumstances to satisfy your request. We apologize for the length of time it has taken to fully answer, but we had received a huge number of requests and could only apportion our time and efforts accordingly. We thank you for your patience and consideration.

We have now completed a thorough search of our records and were able to locate the additional documents discussed below. These have been reviewed carefully and our determinations are as follows:

One report, dated 18 June 1971, is being withheld in its entirety under the exemption provisions of Freedom of Information Act subsections (b)(1) and (b)(3). The reasons given in our earlier letter for applying exemption (b)(3) also apply in this case. Exemption (b)(1) applies to material which is properly classified pursuant to Section 1 of Executive Order 11652 and is exempt under Section 5(B) of that same Order.

Mr. Charles A. Briggs, Chief, Services Staff, made the decision cited above.

In addition, our final searches surfaced materials which originated with the Federal Bureau of Investigation to which they have been identified for review and direct response to you.

As specified in the Freedom of Information Act, I am advising you of your right to appeal the above decision,

as well as those cited in my earlier letter of 29 October 1975, by addressing your appeal to the CIA Information Review Committee, via the undersigned.

Sincerely,

Gene F. Wilson
Information and Privacy Coordinator

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

December 10, 1975

Mr. Abraham Bloom
Washington Area Peace Action Coalition
3313 Harrell Street
Wheaton, Maryland 20906

Dear Mr. Bloom:

Reference is made to recent telephone conversations between Ms. Pillsbury of the law firm representing you and Special Agent Donald L. Smith of our Freedom of Information-Privacy Acts Section.

Enclosed herewith are 72 pages of information from our central records which we are authorized to release to you. These documents should not be regarded as a complete review of our files. The enclosed pages represent only a portion of the documents which appear to be pertinent to your request. The processing of the files for release to you of additional documents continues.

In accordance with the provisions of Title 5, United States Code, Section 552 (a)(4)(A) an agency may determine to waive or reduce fees when the information requested can be considered as primarily benefiting the general public. In balancing the potential public benefit in your request against the concomitant expenditure of the public funds, we have concluded that the interests of the general public appear more likely to be served by the preservation of public funds. Therefore, your request for a waiver of fees is denied.

We are authorized under current regulations to charge ten cents per page for reproduction costs prior to the releasing of material. However, in order not to delay the furnishing of these records to you, we request that you remit a check for $7.20 made payable to the Federal Bureau of Investigation.

Mr. Abraham Bloom

The data which has been withheld from the material reviewed thus far, including that which is deleted from the enclosed documents, is exempt from disclosure pursuant to one or more of the following subsections of Title 5, United States Code, Section 552:

(b)(2) related solely to the internal personnel rules and practices of an agency;

(b)(5) inter-agency or intra-agency memorandum not available through discovery proceedings during litigation;

(b)(7) investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of privacy;

(D) reveal the identity of a confidential source.

You have thirty days from receipt of this letter to appeal to the Attorney General from any denial contained herein. Appeals should be directed in writing to the Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D. C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Following the Attorney General's decision, judicial review is available in the district of your residence or principal place of business, or in the District of Columbia, where the records are situated.

Sincerely yours,

Clarence M. Kelley
Director

Enclosures (32)

DEPARTMENT OF THE ARMY
THE ADJUTANT GENERAL CENTER
WASHINGTON, D.C. 20314

24 OCT 1975

DAAG-AMR-S (75-282)

SUBJECT: Freedom of Information Act Request/ BLOOM, Abraham

☒ Commander, US Army Intelligence Agency, ATTN: MIIA-PS-D/Mr Conley, Building T-4572, Fort George G. Meade, MD 20755
☐ Commander, US Army Criminal Investigative Command, ATTN: CIJA-RI/ CPT Fagan, Room 2025 T-B, Washington, DC 20318
☐ Commander, RCPAC, ATTN: AGUZ-PSD/LTC Miller, 9700 Page Boulevard, St Louis, MO 63132

1. The attached request is forwarded for necessary action and direct reply. **Request received in this office on 23 October 1975.**

2. Request this office be furnished a copy of action taken.

FOR THE COMMANDER:

CYRUS H. FRAKER

R. W. HAMPTON
Colonel, AGC
Dir of Admin Mgt

Incl
as

CF:
Requester

TAGO FL 2-18 1 May 75

DEPARTMENT OF THE ARMY
US ARMY COUNTERINTELLIGENCE SUPPORT DETACHMENT
US ARMY INTELLIGENCE AGENCY
FORT MEADE, MARYLAND 20755

MIIA-PSO-D

SUBJECT: Freedom of Information Request

Mr. Abraham Bloom
Chairman
Washington Area Peace Action Coalition
3313 Harrell Street
Wheaton, Maryland 20906

1. Your request, dated 5 July 1975, directed to the Central Intelligence Agency (CIA), requesting investigative records concerning The Washington Area Peace Action Coalition and The Washington Mobilization Committee was referred to this Agency on 21 October 1975 and received on 29 October 1975.

2. To determine the existence of any investigative file, a check was made of the Automated Defense Central Index of Investigations (DCII). This Index is managed by the Defense Investigative Service (DIS) for the Department of Defense. The results of the DCII check indicate no record an an Army investigative file regarding The Washington Area Peace Action Coalition or The Washington Mobilization Committee.

3. A search was made at the Investigative Records Repository (IRR), this headquarters, which is the official custodian for Army intelligence files. Records at the IRR reveal four separate files (ZB 506690, ZB 507090, ZB 504771, and ZB 505398) under the title "Washington Mobilization Committee" and one file (ZB 511736) under the title "Washington Area Peace Action Coalition". Records at the IRR reveal further that all five files have been previously deleted from their holdings, in accordance with Army Regulations governing the disposition of such files, and are no longer available. The exact date of destruction of these files cannot be ascertained.

FOR THE COMMANDER:

Thomas F. Conley
THOMAS F. CONLEY
Chief, Freedom of Information Center

CF:
DAAG-AMR-S

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

29 OCT 1975

Mr. Abraham Bloom
Washington Area Peace Action Coalition
3313 Harrell Street
Wheaton, MD 20906

Dear Mr. Bloom:

In response to your request for access to any Agency information concerning the Washington Area Peace Action Coalition, let me advise you that we are indeed continuing to process your request. Since this processing has not been completed, and because of the time that it is taking to do so, we have decided to send you this partial response as a more concrete assurance to you of our sincere desire to comply with your request.

The documents that have been located thus far have been reviewed and the following are our determinations.

a. Enclosed are copies of the following documents (Tab A) which are being released in their entiretu:

(1) Summary of New Mobilization Committee history, undated.

(2) Letter from the Washington Mobilization Committee, dated 16 October 1967.

(3) Pamphlet from the New Mobilization Committee titled "Dismantling the War Machine," undated.

(4) Schedule of Events from the New Mobilization Committee, undated.

(5) Letter from the New Mobilization Committee, undated.

(6) Pamphlet from the New Mobilization Committee titled "Organizing for Civil Disobedience," undated.

(7) Memorandum regarding the Washington

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

Mobilization Committee, dated 12 September 1968.

(8) Compilation of material from the Public News Media, circa November 1969.

(9) Pamphlet from the National Mobilization Committee titled "Mobilizer," dated 15 August 1968.

(10) Leaflet regarding military induction.

(11) Memorandum regarding the Mobilization Committee, dated 16 March 1970.

(12) Memorandum regarding the New Mobilization Committee, dated 17 March 1970.

(13) Memorandum regarding the New Mobilization Committee, dated 12 March 1970. (Cited attachment was not in the file.)

(14) Memorandum regarding the New Mobilization Committee, dated 12 March 1970.

(15) Memorandum regarding the New Mobilization Committee, dated 5 March.

(16) Memorandum regarding the New Mobilization Committee 8 April 1970 meeting.

(17) Memorandum regarding the New Mobilization Committee 1 April 1970 meeting.

(18) Nineteen miscellaneous flyers and handbills issued by National and Local Peace Action Coalition and Mobilization Groups, dates unknown or as indicated on documents.

(19) Bulletin of the Central Committee of Correspondence "Mobilization Set for Chicago," dated 2 August 1968.

(20) Leaflet "The Democratic Convention in Chicago Must Hear From the Independent Peace Movement."

(21) "Press Item for the DCI", dated 4 November 19(?).

b. Enclosed also (Tab B) are copies of segregable portions of the documents listed below. Deletions were made under provisions of subsections (b)(3) and (b)(6) of the Freedom of Information Act, and the applicable exemptions are given with each citation. Exemption (b)(3) applies to the Director's statutory obligation to protect from disclosure intelligence sources and methods, as well as the organization, functions, names, official titles, salaries and number of personnel employed by the Agency, in accord with the National Security Act of 1947 and the CIA Act of 1949, respectively; and, (b)(6) applies to information release of which would constitute an unwarranted invasion of the personal privacy of other individuals.

Document	FOIA Exemptions
(1) Routing Slip, dated 12 September 1968, with attached Washington Mobilization flyer.	(b)(3)
(2) Compilation of material available from News Media, dated 24 October 1969.	(b)(3)
(3) Letterhead from New Mobilization Committee to End the War in Vietnam, undated.	(b)(3), (b)(6)
(4) Pamphlet from the National Mobilization Committee, dated 8 Jul 1968.	(b)(3)
(5) Flyer from the Washington Women Strike for Peace, circa November 1968.	(b)(3)
(6) Memorandum regarding Peace Demonstration, dated 9 February 1970.	(b)(3)
(7) Letter from the Washin - ton Area Peace Action Coalition, dated 15 October 1970.	(b)(3)
(8) Memorandum regarding the Washington Area Peace Action Coalition, dated 27 October 1970.	(b)(3)

Document	FOIA Exemptions
(9) Report regarding Peace Demonstrations, undated.	(b)(3)
(10) Memorandum regarding a of the Washington Mobilization Committee, dated 5 March 1970.	(b)(3)
(11) Memorandum regarding the New Mobilization Group, dated 7 November 1969.	(b)(3), (b)(6)
(12) Memorandum regarding the Washington Mobilization for Peace, dated 14 August 1968.	(b)(3)
(13) Memorandum regarding leaflet distribution, dated 25 September 1970.	(b)(3)
(14) Memorandum regarding Washington Mobilization for Peace Meeting, dated 16 August 1968.	(b)(3)
(15) Memorandum for the Record, dated 16 September 1968.	(b)(3)
(16) Report, dated 22 October 1969.	(b)(3)

c. The following documents are being withheld in their entirety. The withholding exemptions are given with each citation. The reasons given above for applying (b)(3) also pertain where cited below.

Document	FOIA Exemptions
(1) Memorandum, dated 27 August 1968.	(b)(3)
(2) Information Report, undated.	(b)(3)

Mr. Sidney D. Stembridge, Deputy Director of Security, made the decisions enumerated above in paragraphs b. and c.

In addition to the above Agency documents we also located a number of documents originating with other branches of the government, including the Federal Bureau of Investigation, the Secret Service, and the Department of the Army. The document citations have been referred to them for direct response to you.

As specified in the Freedom of Information Act, you have the right to appeal the above decisions to the CIA Information Review Committee, but it would seem more reasonable to wait for our final reply, which I expect to make shortly, before deciding whether you may wish to exercise this right.

We want to thank you for your consideration and patience.

Sincerely,

Gene F. Wilson
Information and Privacy Coordinator

Enclosure

4-682 (Rev. 5-19-75)
OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

July 18, 1975

Mr. Abraham Bloom
Washington Area Peace Action Coalition
3313 Harrell Street
Wheaton, Maryland 20906

Dear Mr. Bloom:

This is to acknowledge your recently received Freedom of Information Act request.

Due to the increased interest generated by the amendments to the Freedom of Information Act, it is necessary to advise you that an extension of time is needed to process your request.

You may be assured that every feasible effort will be made to comply with your request within 30 working days and you will be advised of the results as soon as possible.

Sincerely yours,

Clarence M. Kelley
Director

December 6, 1976

Mrs. [illegible]
c/o Julius W. Hobson
Councilman At-Large
Council of the District of Columbia
The District Building
Washington, D.C. 20004

Police Chief Maurice Cullinane
Metropolitan Police Department
300 Indiana Avenue, N.W.
Washington, D.C. 20001

Dear Chief Cullinane:

Pursuant to the Mayor's Order 76-109 dated May 4, 1976 (Subject: Availability of Official Information for Public Disclosure), I am requesting full access to any information and records relating to the attached article which appeared in the Washington Post on May 25, 1972. In your response please include any information that details how the attached article was obtained and to whom such information was transferred.

I would appreciate a response to this request by December 20, 1976.

Thank you for your cooperation.

Sincerely,

Tina C. Hobson

Attachments:

Washington Post article dated May 25, 1972
Letter from Mr. Wilson to Councilman Hobson dated November 16, 1976

November 29, 1976

Mrs. Justine Clapp Lower Hobson
c/o Julius W. Hobson
Councilman at-Large
Council of the District of Columbia
The District Building
Washington, D.C. 20004

The Honorable Clarence M. Kelley
Director
Federal Bureau of Investigation
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Mr. Kelley:

I received your letter of November 17, 1976 indicating that the Civil Service Commission's response to my Freedom of Information-Privacy Acts (FOIPA) requests contained documents that originated with the Federal Bureau of Investigation and that these documents had been referred to the FBI on November 10, 1976 with the request that the Bureau determine their "releasability."

In addition your letter asked that I submit a notarized signature so that the FBI can process and release those documents pretaining to me which the Civil Service Commission referred to the Bureau. I have had the signature of this letter notarized in order to comply with this request.

I would appreciate your efforts in expediting the release of those documents as quickly as possible.

Sincerely,

Tina C. Hobson

Attachments:

Letter from Mr. Kelley to Mrs. Hobson dated 11/17/76
Letter from CSC to Mr. Hobson dated 11/5/76
Letter from CSC to Mr. Neptune dated 7/26/76
Standard Form 86 signed 4/16/76
Standard Form 85 signed 7/30/68

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

November 17, 1976

Mrs. Justine Clapp Lower Hobson
c/o Julius W. Hobson
Councilman at Large
Council of the District of Columbia
The District Building
Washington, D. C. 20004

Dear Mrs. Hobson:

This is in reference to your Freedom of Information-Privacy Acts (FOIPA) request to the Civil Service Commission. Contained in their records were documents which originated with the Federal Bureau of Investigation (FBI). These documents were referred to this Bureau on November 10, 1976, with the request that the FBI determine their releasability.

An exceedingly heavy volume of FOIPA requests has been received these past few months. Additionally, court deadlines involving certain historical cases of considerable scope have been imposed upon the FBI. Despite successive expansions of our staff responsible for FOIPA matters, substantial delays in processing requests continue.

Since January 1, 1975, the FBI has received a total of 27,714 FOIPA requests. Of these, our present backlog is 7,978. In an effort to deal fairly with any request requiring the retrieval, processing and duplication of documents, each request is being handled in chronological order based on the date of receipt. Please be assured that your request is being handled as equitably as possible and that all documents which can be released will be made available at the earliest possible date.

RECEIVED

NOV 19 1976

Julius Hobson, Sr.
Councilmember-At-Large

Mrs. Justine Clapp Lower Hobson

Prior to the processing or release of the referred documents, which may pertain to you, please submit your notarized signature. This procedure is designed to insure that information concerning an individual is released only to that person.

Your patience and understanding will be appreciated.

Sincerely yours,

C M Kelley

Clarence M. Kelley
Director

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

16 NOV 1976

RECEIVED
NOV 17 1976
Julius Hobson, Sr.
Councilmember-At-Large

Mr. Julius W. Hobson
Councilman at Large
Council of the District of Columbia
The District Building
Washington, DC 20004

Dear Mr. Hobson:

This is in response to a request from your wife, dated 16 July 1976.

We have completed a thorough search of our records and located one document pertaining to her. Attached is a copy of the segregable portion of the Washington Post, dated 25 May 1972. Deletion in the original was made under the exemption provision of the Privacy Act subsection (j)(1) which, in this case, applies to a segregable portion of a document which would disclose intelligence methods (namely filing instructions).

As specified in the Privacy Act, I am advising you of her right to appeal the above decision by addressing her appeal to the undersigned. I will bring it to the attention of the appropriate senior officials.

Pursuant to Mayor Order 76-109, dated 4 May 1976, you might advise Mrs. Hobson that she can enter a similar request to the District of Columbia Police.

We thank you for your patience and consideration.

Sincerely,

Gene F. Wilson
Information and Privacy Coordinator

Enclosure

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF PERSONNEL INVESTIGATIONS
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
TO BE OPENED BY ADDRESSEE ONLY

5 NOV 1976

Mr. Julius W. Hobson
Council at Large
Council of the District of Columbia
The District Building
Washington, D.C. 20004

Dear Mr. Hobson:

In response to Mrs. Hobson's letter received in this office August 17, 1976, attached herewith is a copy of the information contained in her investigative file pursuant to the Privacy Act of 1974, Public Law 93-579.

The attached documents are exact copies of the material contained in her investigative file which originated in or is the property of the U. S. Civil Service Commission. The only data that has been deleted from these documents is information which is exempt from disclosure under Section 552a (k) (5) of the Privacy Act of 1974 or is strictly limited to names of other individuals and information pertaining to them.

Mrs Hobson's investigative file also contains reference to data, pertaining to her, that originated in the Federal Bureau of Investigation. The letter to Mr. Neptune dated July 26, 1976, the Standard Form 86 signed April 16, 1976 and the Standard Form 85 signed July 30, 1968 refer to data, concerning Mr. Julius W. Hobson, which originated in the Federal Bureau of Investigation and which is located in her file. The data referred to is the property of the Federal Bureau of Investigation and can be released only by that agency. For her convenience and to expedite her request we have forwarded a copy of Mrs. Hobson's letter to the Federal Bureau of Investigation and they will be contacting you concerning this matter.

Sincerely yours,

Robert J. Drummond, Jr.
Director

Enclosures
(Listed on page 2)

Section 552a (k) (5) of Public Law 93-579
Letter to Mr. Neptune dated 7/26/76
Form IN 487 dated 7/26/76
Request for Investigation dated 5/24/76
Form IN 44 dated 5/13/76
FEA letter to CSC undated
CSC Form 232 dated 5/3/76
Standard Form 86 signed 4/16/76
Form IN 44 dated 11/5/69
CSC Form 232 dated 10/29/69
Form IN 487 dated 9/6/68
Memorandum to Mr. Hays dated 9/6/68
Form MP 150 dated 8/1/68
Standard Form 85 signed 7/30/68
CSC Form 328 signed 11/20/67
One CSC Report of Investigation (1967)
Letter from State to CSC dated 10/26/66
Standard Form 73 dated 1/11/66
Form IN 320A dated 12/28/65
Form IN 290 dated 12/22/65
6 CSC Reports of Investigation (1965)
Report of Record Search dated 11/14/65
Form IN 339 dated 10/26/65
CSC Form 3746 dated 10/11/65
CSC Form 3746-A dated 10/11/65
Request for Investigation dated 10/6/65
Standard Form 86 signed 10/4/65

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF PERSONNEL INVESTIGATIONS
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

24 AUG 1976

Mr. Julius W. Hobson
Council at Large
Council of the District of Columbia
The District Building
Washington, D.C. 20004

Dear Mr. Hobson:

This is in response to Mrs. Hobson's Privacy Act inquiry received by this office August 17, 1976, in which she requested information contained in her investigative file. The Bureau of Personnel Investigations of the U.S. Civil Service Commission processes all requests in which an individual is seeking investigative file information from our system of records pertaining to herself or is seeking correction or amendment of such records under the Privacy Act of 1974, Public Law 93-579; and considers the provisions of the Privacy Act of 1974 to be exclusively applicable to all such requests.

This is to advise you of our decision to furnish you a copy of the information which she requested with the exception of any material that is exempt from disclosure under the Privacy Act of 1974, particularly Section 552a (k) (5). We would expect to be able to furnish the requested material to you by certified mail as soon as possible.

Sincerely yours,

Robert J. Drummond, Jr.
Director

Enclosure

Section 552a (k) (5) of Public Law 93-579

RECEIVED

AUG 27 1976

Julius Hobson, Sr.
Councilmember-At-Large

RECEIVED

Julius Hobson, Sr.
Councilmember-At-Large

THE MERIT SYSTEM—A GOOD INVESTMENT IN GOOD GOVERNMENT

PRIVACY ACT OF 1974

PUBLIC LAW 93-579

EXTRACT OF SECTION 552a (k) (5)

Section 3, Title 5, United States Code is amended by adding after Section 552 the following new Section:

§ 552a. Records maintained on individuals.

(k). Specific Exemptions - The head of any agency may promulgate rules... to exempt any system of records within the agency... if the system of records is...

> "(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;"

NOTE: The United States Civil Service Commission published its proposed rules which exempt Personnel Investigative Records in the Federal Register of August 27, 1975, pp. 39239 to 39252.

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF MANPOWER INFORMATION SYSTEMS
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO
SMR
YOUR REFERENCE

AUG 13 1976

Mr. Julius W. Hobson
Council at Large
Council of the District of Columbia
The District Building
Washington, D. C. 20004

re: Privacy Act request
of Justine C. Hobson

Dear Mr. Hobson:

This refers to Mrs. Hobson's recent Privacy Act inquiry, requesting copies of all Civil Service Commission files pertaining to her.

This bureau, as the system manager of the Government-wide CSC/GOVT-3 General Personnel Records system, maintains civilian personnel records of former and current Federal employees. Records in this system are filed in the Official Personnel Folder (OPF), which is maintained on every Federal employee. Because Mrs. Hobson is a current Federal employee, her OPF is filed in the Personnel Office of the Federal Energy Administration, and arrangements for review of the folder can be made with her Personnel Chief, giving her name, address, and phone number.

The Commission maintains a total of thirteen different record systems, three of which pertain to Commission employees only. These systems are defined by, and subject to, the provisions of the Privacy Act of 1974 (Public Law 93-579). I am enclosing a list of these systems to assist Mrs. Hobson with record requests.

Because Mrs. Hobson seems particularly interested in investigative records, I am referring her letter, and a copy of this letter, to the Commission's Bureau of Personnel Investigations (BPI). That office will contact her directly concerning its findings.

If I can be of further assistance, please contact me.

Sincerely,

(Dr.) Philip A. D. Schneider
Associate Director for Manpower Information

RECEIVED
AUG 16 1976
Julius Hobson, Sr.
Councilmember-At-Large

Enclosure

Attachment

PRIVACY ACT REQUEST
Summary of Records Systems

The U. S. Civil Service Commission (CSC) maintains, or directs the maintenance of, thirteen different records systems covered by the Privacy Act of 1974. Individuals interested in determining which system of records may contain information about them may be helped by reviewing the following guides:

Current Federal Employees. Although each of the thirteen systems may contain information concerning current Federal employees, the "General Personnel Records" and the "Personnel Investigations Records" systems are the most common sources of personal information.

Former Federal Employees. In addition to the "Civil Service Retirement Records" system (civilian retirees), the "General Personnel Records" and "Personnel Investigations Records" systems may contain information pertaining to former Federal civilian employees of the Federal Government.

Applicants for Federal Employment. The "Personnel Investigations Records" and the "Recruiting, Examining, and Placement Records" systems may contain information about individuals who have filed an employment application with one of the Commission's area offices.

Government Contractor Employees. Individuals who have worked for a Government contractor that required them to have a security clearance may find information pertaining to them in the "Personnel Investigations Records" system.

The following list of records systems contains: 1) the system's name; 2) the title of the official(s) to contact; and 3) a summary of information which must be submitted in order to identify records as yours. Note: In the interest of brevity the list does not include three records systems which pertain only to Commission employees; these are the "Pay, Leave, and Travel Records," "Motor Vehicle Operator and Accident Report Records," and "Defense Mobilization Emergency Cadre Records" systems.

General Personnel Records. Contact: the Personnel Officer servicing your installation, if currently employed; the Director, Bureau of Manpower Information Systems, CSC, if a former Federal employee.

If a former employee, include: your full name, date of birth, Social Security Number, and Federal agency where last employed.

GOVERNMENT

Personnel Investigations Records. Contact: the Director, Bureau of Personnel Investigations, CSC.

Include any available information regarding 1) the type of record involved, and 2) the category of information (Examples: current or former applicant for employment in X-Agency, current or former applicant for employment with X-International Organization, individual considered for access to classified information) under which you believe information about you may be found.

Civil Service Retirement Records. Contact: the Director, Bureau of Retirement, Insurance, and Occupational Health, CSC.

Include: your full name, and any former names under which employed; the date of your birth; your Social Security Number; the name and address of the Federal office in which you are/were, employed; and, if assigned, your annuity account number.

Appeals, Grievances, and Complaints Records. Contact: the Chairman, Appeals Review Board, CSC, if interest is in Appeals Review Board appeal and reopening Control Index Card file; the Director, Federal Employee Appeals Authority, CSC, if interest is in Part 772 appeal records; the Director, Bureau of Personnel Management Evaluation, CSC, if interest is in classification appeals to the Commission, performance rating appeals, and complaints records; the Personnel Officer servicing your installation, if interest is in agency adverse action appeals initiated before September 9, 1974, classification appeals in agencies, EEO complaint files, or grievance records.

Include: your full name and date of birth; the agency in which you are/were employed; the approximate date, and the kind of action taken by the agency.

Recruiting, Examining, and Placement Records. Contact: the Area Manager, CSC Area Office (to which you applied), if interest is that of an applicant for employment; the Personnel Officer of the specific agency to which application was made, if interest is that of a current Federal employee.

If an applicant, include: your full name, date of birth, Social Security Number, and, if known, your identification number; the approximate date of the record; the title of the examination or announcement with which concerned; and the geographic area in which consideration was requested. If a current Federal employee, include: your full name, date of birth, and Social Security Number; the vacancy announcement number, if known; and the title of the position for which applied.

Confidential Employment and Financial Interest Statements. Contact: the General Counsel, CSC, if interest is in agency heads, presidential appointees in the Executive Office of the President, Presidential appointed full-time members of committees or commissions, or Commissioners and employees of the Civil Service Commission; the General Counsel of the Department or Agency with which employed, if interest is in employees other than those just noted.

Include: your full name, your Department or Agency, and Department or Agency component.

Personnel Research Test Validation Records. Contact: the Director, Personnel Research and Development Center, CSC, or the Director of any Regional Office of the Commission.

There are no procedures for gaining access to information in this system; all material and information about individuals are exempt from most provisions of the Privacy Act of 1974.

Litigation and Political Activity (Hatch Act) Records. Contact: the General Counsel, CSC.

Include: your full name, the record in which interested, the civil action number, if any, and your State of residence at the time of the action.

Federal Executive Development Program Records. Contact: the Director, Bureau of Executive Manpower, CSC.

Include: your full name, date of birth, and Social Security Number; and the year in which you were nominated or selected for a program.

Executive Assignment and Inventory Records. Contact: the Director, Bureau of Executive Manpower, CSC.

Include: your full name, date of birth, and Social Security Number.

In any correspondence concerning a request for information under the Privacy Act, always include your current mailing address. When contacting an official of the Commission, with the exception of Regional Directors and Area Managers, the address is:

(Title of Official)
U.S. Civil Service Commission
1900 E Street, N.W.
Washington, D.C. 20415

The address of Regional Directors and Area Managers may be found under the "U.S. Government" listing in your local telephone directory, or you may obtain the information by writing to the Director, Bureau of Manpower Information Systems, at the address just given.

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

July 23, 1976

Mr. Julius Wilson Hobson
Apartment 214
901 6th Street, S. W.
Washington, D. C. 20024

Dear Mr. Hobson:

This is to acknowledge receipt by the FBI on June 23, 1976, of your Freedom of Information-Privacy Acts (FOIPA) request dated June 21, 1976.

A preliminary review of the index to our central records discloses references to a name similar to yours. Since our records contain innumerable instances of different people with the same name, and we have reviewed only the index to our records at this point, and not the records themselves, we do not know whether the records in question relate to you.

An exceedingly heavy volume of FOIPA requests has been received these past few months. Additionally, court deadlines involving certain historical cases of considerable scope have been imposed upon the FBI. Despite successive expansions of our staff responsible for FOIPA matters, substantial delays in processing requests continue.

We are now beginning to work on requests which we received during October, 1975.

Since January 1, 1975, the FBI has received a total of 23,986 FOIPA requests. Of these, our present backlog is 8,335. In an effort to deal fairly with any request requiring the retrieval, processing and duplication of documents, each request is being handled in chronological order based on the date of receipt. Please be assured that your request is being handled as equitably as possible and that all documents which can be released will be made available at the earliest possible date.

Mr. Julius Wilson Hobson

Before we can commence processing for release any documents which may pertain to you, it will be necessary for you to submit your notarized signature. This procedure is designed to insure that information concerning an individual is released only to that person.

If you desire a search of our Identification Division records, please comply with the instructions set forth in Attorney General Order 556-73, a copy of which is enclosed.

Your patience and understanding will be appreciated.

Sincerely yours,

Clarence M. Kelley
Director

Enclosure

[Order No.]

PART 16—[illegible] OF PROCEDURE OF MATERIAL ON FILE OF [illegible]

Subpart C—Identification of FBI Identification Records Regarding Requests to Amend or Delete Records by Subjects Thereof

By order dated [illegible], 1973, the Attorney General of the United States delegated to the Federal Bureau of Investigation, hereinafter referred to as the FBI, [illegible] for the identification of arrest and conviction records to the subjects of such records upon request. This action resulted from a determination that 28 U.S.C. 534 does not prohibit the subjects of arrest and conviction records from having access to their records. In accordance with the Attorney General's order, the FBI will refer to the subjects of identification records copies of such records upon submission of a written request, satisfactory proof of identity of the subject under identification record is requested and a processing fee of five dollars.

Since the FBI Identification Division is not the source of the data appearing in identification records, and obtains all data thereon from fingerprint cards or related identification forms submitted to the FBI by local, state, and Federal agencies, the responsibility for authentication and correction of such data rests upon the contributing agencies. Therefore, the rules set forth for changing, correcting or updating such data require that the subject of an identification record make application to the original contributing agency in order to correct the deficiency complained of.

The relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation and delay in effective date are inapplicable because the material contained herein relates to the interpretation of 28 U.S.C. 534 as allowing the granting of an exemption to subjects of identification records and relief of prior administrative restrictions on dissemination of such records to them. Furthermore, it is deemed in the public interest that there be no delay in effective date of availability of identification records to the subjects thereof.

By virtue of the order of the Attorney General, dated September 24, 1973, and pursuant to the authority delegated to the Director, FBI by 28 CFR 0.85(b), Part 16 of 28 CFR Chapter I, is amended by adding the following new Subpart C:

§ 16.30 Purpose and scope.

This subpart contains the regulations of the Federal Bureau of Investigation, hereafter referred to as the FBI, concerning procedures to be followed when the subject of an identification record requests production thereof. It also contains the procedures for obtaining any change, correction or updating of such record.

§ 16.31 Definition of identification record.

An FBI identification record, [illegible] a photograph and [illegible] by the FBI [illegible] of arrests and [illegible] of persons [illegible] by the [illegible] of criminal offenses. The identification record includes the name of the agency or institution which submitted the fingerprints to the FBI. If the fingerprints submitted to the FBI concern a criminal offense, the identification record usually includes the date of arrest or receipt, charge information and disposition data concerning the arrest if known to the FBI. All such data [illegible] in an identification record are obtained from the contributing local, State and Federal agencies. The FBI Identification Division is not the source of any data reflected on an identification record.

§ 16.32 Procedure to obtain an identification record.

The subject of an identification record may obtain a copy thereof by submitting a written request via the United States mails directly to the FBI, Identification Division, Washington, D.C. 20537, or may present his written request in person during regular business hours to the FBI Identification Division [illegible] Washington, D.C. Such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth and a set of rolled-ink fingerprint impressions taken upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

§ 16.33 Fee for provision of identification record.

Each written request for production of an identification record must be accompanied by a fee of five dollars ($5.00) in the form of a certified check or money order, payable to the Treasurer of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 483a and is based upon the clerical time beyond the first quarter hour to be spent in searching, identifying and reproducing each identification record requested, at the rate of $4.25 per quarter hour, as specified in § 16.9. Any request for waiver of fee shall accompany the original request for the identification record and shall include a claim and proof of indigency. Consideration will be given to waiving the fee in such cases.

§ 16.34 Procedure to obtain change, correction or updating of identification records.

If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, correction or updating of the alleged deficiency, he must make application [illegible] contributor of the [illegible]. Upon the receipt of [illegible] identification [illegible] the FBI [illegible] make any [illegible] with the information [illegible] the agency.

CLARENCE M. [illegible]
Director,
Federal Bureau of Investigation.

NOVEMBER 21, 1973.

[FR Doc.73-25106 Filed 11-27-73; 8:45 am]

NOV 5 1976

Mr. Richard P. Pollock
1730 New Hampshire Avenue, N.W.
Washington, D.C. 20009

Dear Mr. Pollock:

This is in response to your July 9, 1976 Freedom of Information/ Privacy Act request for all files and documents maintained by IDIU (Inter-Divisional Information Unit) that relate to you.

We referred your request to the Federal Bureau of Investigation pursuant to 28 C.F.R., § 16.43 (a)(2) when we discovered that the information relating to you contained in the IDIS was furnished by the FBI. As a result of that referral, I wish to advise you that portions of two duplicate cards, enclosures 1 and 2, are being withheld from you. This information was derived from a system of records maintained by the FBI and exempted by 28 C.F.R., § 16.96 from the disclosure provisions of the Privacy Act of 1974 in conformity with subsection (j)(2) of the act 5 U.S.C., 552a. Specifically, release of the deleted information might identify a confidential source and for that reason is being withheld.

Information contained in enclosures 3 through 7 are retrievable by the names and numbers of several individuals in addition to you. These names and numbers of other individuals which aid in the retrieval of the cards have been deleted because we believe that they are outside the scope of your request and that such release to third parties without assuring the accuracy and relevancy of these records would constitute a clearly unwarranted invasion of their personal privacy.

With the exception of the withheld information detailed above, and the deletion of classification markings, all information contained in the seven cards has been reproduced and is enclosed for your review.

In the event you believe the excised portions of these cards are available to you pursuant to the Privacy Act of 1974 (5 U.S.C., 552a), you may appeal this decision under 28 C.F.R., § 16.47 within 30 days

by writing to the Deputy Attorney General, Department of Justice, Washington, D.C. 20530. The envelope and letter should be clearly marked, "Privacy Appeal - Denial of Access".

Sincerely,

(Signed) Lloyd A. Bastian

Lloyd A. Bastian, Acting Director
Information Systems Staff
Office of Management and Finance

Enclosures

POLLOCK,RICHARD PHILLIP

ALIAS POLLACK,RICHARD PHILLIP

1 PCPJ MEMBER

ID = 026981

2 NSA NATL. OFFICER

HOME	WASHINGTON
STATE	D.C.
DATE OF BIRTH	09/13/51
ACE	
SEX	MALE
RACE	CAUCASIAN
ARRESTS	YES
CRIM. RECORD	NO

SOURCE

FBI 146-1-16-5667 04/19/72

146-1-50-1334 8/24/71

206

5/71 ATTND MDC CONF, NEEDMORE, IA. CCORD PCPJ DEMC 5/27/71 WDC. A/O 2/72 IS PGM DIR FOR NSA.

2/72 ATTND PEACE CONF, VERSAILLES, FR.

5/6/72 REP RENNIE DAVIS AT FPPC MTG, TAMPA, FLA.

NAME FILE

CARD MADE ON 06/13/72

ENCLOSURE 1

POLLACK, RICH[illegible]

AN [illegible]AS [illegible]

POLLOCK, [illegible] ILLIP

HOME [illegible]
STATE [illegible]

DATE OF BIRTH [illegible]
AGE
SEX M
RACE CA
ARRESTS YE
CRIM. RECORD NO

1 FCPJ
MEMBER

2 NSA
NATL. OFFICER

ID = 026981

SOURCE

FBI 146-1-16-5667 04/19/72
146-1-60-1334 8/24/71

206

5/71 ATTND MDC [illegible] FREEDMORE, IA. CCCPC FCPJ CEMC 5/27/71 WCC. A/O
2/72 IS PGM DIR [illegible]
2/72 [illegible] PEACE CONF, VERSAILLES, FR.
5/6/72 REF RENNIE DAVIS AT FPPC MTG,

TAMPA, FLA.

CARD MADE ON 06/13/72

NAME FILE

ENCLOSURE 2

POLLOCK, RICHARD PHILLIP ID NO 026961 POS NO 05 C-O-N-T-A-C-T-S

ID NAME

DATE 05/05/72
PLACE TAMPA , FLA.
TRVLD FROM
TYPE UNION MEETING 70
ISSUE ANTI-VIETNAM WAR
STATISTICS NO OTHS INJ ARR
WEAPONS

SPONSORS FPPC
ACTIVITY

SOURCE FBI TEL 05/09/72

VVAW
YSA
MXULF

191

FPPC CONF AT USF ATTND BY 50 PEOPLE. GRP DECIDED TO STAGE LCL KEY ACTIONS AT DNC W/I 10 DEMO RAGE AT NIXON ADMIN POLICIES DURING RNC. MASSIVE RA IN MIAMI PLANNED PRIOR TO RNC. CIVIL DISOB & MAYDAY TACTICS POSS. GRPS IN FPPC UMBRELLA INCL WHOLE EARTH CULT, NATL STU ALLIANCE, ANTI WAR UNION, MIAMI LIB FRONT & LABOR UNION REPS.

NAME FILE INCIDENT NUMBER C29534 MADE ON 06/30/72

ENCLOSURE 3

POLLOCK, RICHARD PHILLIP ID NO 226981 POS NO 13. C-C-N-T-A-C-T-S

ID NAME

DATE 03/24/72 TO 03/26/72
PLACE WASHINGTON D.C.
TRVLD FROM
TYPE ORGAN MEETING 70
ISSUE ANTI-VIETNAM WAR
STATISTICS KIA WIAS INJ ARR
WEAPONS

SPONSORS PCPJ
ACTIVITY

SOURCE FBI 145-1-1a-121 03/31/72

180

MTGS OF PCPJ NATL COORD CMTE ATTND BY 24-25 PERSONS IN SESSION. 3 MBRS FPPC ASKED PCPJ SUPPT FOR FPPC PLANS DURING RNC. MOTION TAKEN UNDER ADVISEMENT. TO DK AV PARIS 3/29 TO MEET W/NLF REPS RE PEACE. PREVIOUSLY SCHEDULED DEMOS AT AF BASES TO BE ONLY ON 5/20. 4x MBRS OF PCPJ NOT PRESENT & THUS LTD CMTES ACCOMPLISHMENT.

FPPC

NAME FILE INCIDENT NUMBER 029647 MADE ON 07/10/72

ENCLOSURE 4

POLLOCK, RICHARD PHILLIP ID NO C26981 POS NO 19 C-O-N-T-A-C-T-S

ID NAME

DATE 05/21/71 TO 05/23/71
PLACE NEEDMORE IND.
TRVLD FROM
TYPE ORGAN MEETING
ISSUE ANTI-VIETNAM WAR
STATISTICS NG DTHS INJ ARR
WEAPONS

SPONSORS
ACTIVITY

SOURCE FBI 146-1-50-1334 08/24/71

ATTENDED MDC CONFERENCE AT NEEDMORE REPRESEN
TING THE MDC FROM WDC TO PLAN NATIONWIDE DEM
OS FOR THE FALL OF 1971.

MDC

69

408

NAME FILE INCIDENT NUMBER 025575 MADE ON 08/24/72

ENCLOSURE 5

POLLOCK, RICHARD PHILLIP ID NO 026981 POS NO 24 C-C-N-T-A-C-T-S
ID NAME

DATE 02/11/72 TO 02/13/72
PLACE VERSAILLES FR.
TRVLD FROM U.S.
TYPE TRAVEL
ISSUE ANTI-VIETNAM WAR
STATISTICS NO DTHS INJ ARR
WEAPONS

SPONSORS
ACTIVITY

SOURCE FBI 146-1-1978 03/24/72

009

WLD ASSEMBLY FOR PEACE & INDEP OF INDOCHINESE PEOPLES SPONS BY STOCKHOLM CONF ON VN & WL D PEACE COUNCIL. 147 AMER DELEGATES. MAJ OF DEL W/PCPJ WHICH SPLIT W/NPAC TROTSKYITES OV ER STRATEGY RE ANTIWAR DEMOS. PCPJ WANTED SE VERAL SMALL DEMOS NPAC WANTED 1 LOG OUT. WAR COMPROMISED SUPPORTED BOTH. PCPJ & NPAC TO C O-SPONS 4/22 DEMOS LA & NYC. 1200 PERSONS FR OM 34 COUNTRIES ATTND. CONF CALLED FOR INTNA TL MASS ACTIONS TO COINCIDE W/US 4/22 DEMOS. CONF ASSERTED SOLIDARITY AGST US ACTIONS IN SE ASIA. ONE OF 3 CARDS.

NAME FILE INCIDENT NUMBER 029012 MADE ON 09/29/72

ENCLOSURE 6

POLLOCK,RICHARD PHILLIP ID NO 026981 PCS NC 05 C-C-N-T-A-C-T-S
IC NAME

DATE 04/20/73
PLACE WASHINGTON D.C.
INVLD FRCM
TYPE ACTIVIST DEMO
ISSUE AMERICAN INDIAN ISSUES IN U.S.A.
STATISTICS NG DTHS INJ ARR
WEAPONS

SPONSORS
ACTIVITY PK

SOURCE FBI 95-800-69-1 06/22/73

AIM

206

125 DEMONS LAFAYETTE PK IN SUPPORT OF INDS AT WOUNDED KNEE-SPONS BY WK DEF CMTE (SELF-IDENT SPKSMN RUTH SWENSON). DONATIONS SOLICITED. PARTIC INCL 2 INDS (WHO STAYED APART) & 12 N'S, OF RELIG SECT-DISPENSING OWN LEAFLETS-OTHERS W. GRP PICKETED AT WHITE HSE W/OUT INC. EARLIER DESCR DEMONS AS "NON-IND THING."

NAME FILE INCIDENT NUMBER 032755 MADE ON 12/20/73

ENCLOSURE 7

JUL 2 8 1976

Mr. Richard P. Pollock
1730 New Hampshire Avenue, N.W.
Washington, D.C. 20009

Dear Mr. Pollock:

This is an interim response to your Privacy Act request dated July 9th and received by this office on July 21, 1976. You requested copies of all files and documents relating to you that are maintained by the Inter-Divisional Information Unit (IDIU).

I wish to advise you that your request is being promptly processed. In the course of our search of the deactivated and secured Inter-Divisional Information System (IDIS), we have found it necessary to consult with another component of the Department of Justice. However, we intend to make a final determination and respond to your request within twenty-five working days, or August 24, 1976. This response time is in accordance with 28 C.F.R. 16.45(a)(2).

This confirms a telephone conversation between you and Mr. Donald E. LaRue of my staff on July 27, 1976.

Sincerely,

Edward Dolan, Director
Information Systems Staff
Office of Management and Finance

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

May 7, 1976

Mr. Richard Philip Pollock
1740 S Street, N.W.
Washington, D. C. 20009

Dear Mr. Pollock:

Reference is made to your correspondence requesting information under the Freedom of Information-Privacy Acts.

Enclosed is a copy of a document from our files. Excisions have been made from this document, and other documents have been withheld in their entirety in order to protect materials which are exempted from disclosure by the following subsections of Title 5, United States Code, Section 552:

(b)(1) information which is currently and properly classified pursuant to Executive Order 11652 in the interest of the national defense or foreign policy;

(b)(2) materials related solely to the internal rules and practices of the FBI;

(b)(7) investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of the personal privacy of another person;

(D) reveal the identity of an individual who has furnished information to the FBI under confidential circumstances or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means;

(F) endanger the life or physical safety of law enforcement personnel.

Mr. Richard Philip Pollock

If you believe your name may also have been recorded by the FBI incident to the investigation of other persons or some organization, please advise us of the details describing the specific incident or occurrence and time frame. Thereafter, further effort will be made to locate, retrieve and process any such records.

You have thirty days from receipt of this letter to appeal to the Attorney General from any denial contained herein. Appeals should be directed in writing to the Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D. C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Sincerely yours,

Clarence M. Kelley
Director

Enclosure

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

[redacted] Office: Washington, D. C.
4/19/72
[redacted]

RICHARD PHILLIP POLLOCK

Synopsis:

POLLOCK, white male, born 9/13/51, Newark, New Jersey, resides 1736 Lanier Place, N.W., Washington, D. C. (WDC), employed as Program Director, United States National Student Association, WDC. POLLOCK attended National Meeting to End the Draft on 2/27-28/72, involved in Mayday and People's Coalition for Peace and Justice activities, and attended World Assembly for Peace at Versailles, France on 2/11-13/72.

DETAILS:

BACKGROUND

Birth

RICHARD PHILLIP POLLOCK was born on September 13, 1951, at Beth Israel Hospital, Newark New Jersey.

Relatives

Father: ROBERT MARTIN POLLOCK, white male, born Orange, New Jersey on November 1, 1923

Mother: RAE BEATRICE POLLOCK, nee SHERMAN, white female, born Warsaw, Poland, during February, 1925

Residences

Current: 1736 Lanier Place, N.W., Washington D. C. (WDC)

Former: 1747 Lanier Place N.W., WDC

Box 718 Mc Dowell Hill, American University, WDC

Education

RICHARD PHILLIP POLLOCK attended Parsippany High School, Parsippany, New Jersey.

RICHARD P. POLLOCK attended American University from September, 1969 through December, 1971.

Employment

Current: United States National Student Association, 2115 Street, N.W. Washington, D. C.

On September 14, 1971, RICHARD P. POLLOCK was observed, [redacted], as he was among sixty-five individuals participating in a demonstration held at the Department of Justice, Washington, D. C. This demonstration was sponsored by the People's Coalition for Peace and Justice, to commemorate the deaths of inmates when a revolt was put down at Attica Prison in New York.

RICHARD POLLOCK, above, is believed associated with "Project Airwar", 1322 18th Street, N.W., Washington, D. C.

Project Air War (PAW) has been described by its Director as a research organization, founded in 1971, which is attempting to make the American public aware of the ever-increasing intensification of the air war as a replacement for the apparent drop in ground war tactics. PAW is headquartered at 1322 18th Street, Northwest, Washington, D. C.

ACTIVITIES

Mayday/Peoples Coalition for Peace and Justice

Mayday has been publicly self-described as an organization which planned large scale anti-war demonstrations and civil disobedience occurring during May, 1971 at Washington, D.C.

Peoples Coalition for Peace and Justice (PCPJ) in a press release dated March 1, 1971, describes itself as consisting of over one hundred organizations whose purpose is to combat the issues of racism, poverty, repression and war, through "massive, nonviolent and disobedience". PCPJ is headquartered in New York City.

It was learned that the Mayday Collective had planned a demonstration at the United States Department of State, Washington, D. C. on May 27, 1971, at 2:00 p.m. The purpose of this demonstration was to be the protesting of the arrests of twenty-two South Vietnamese students who signed the People's Peace Treaty, and are charged with Treason by the South

Vietnamese government.' The contact and coordinator for this demonstration was RICHARD POLLOCK at the People's Coalition for Peace and Justice.

People's Peace Treaty at the 23rd National Student Congress held at Macalester College, St. Paul, Minnesota, during August, 1970, the constituency of the United States National Student Association (NSA) mandated that the National Staff and Officers explore the possibilities of negotiating a separate Peace Treaty, a "People's Peace Treaty" (PPT) with the people, and especially the students of North and South Vietnam. Based on this, approximately fifteen prominent American student leaders traveled to Hanoi, North Vietnam, during the latter part of 1970, and returned to the United States during December, 1970.

The National Student Association (NSA) was self described as the oldest and largest National Student Government Association in the United States founded in 1947, the Association has a membership of over 500 recognized student bodies at colleges and universities across the country and offers programs in educational reform, student legal rights, Greek studies, voter registration, women's studies, an extensive information service for it's members and community action work. The Association maintains a national office at 2115 S Street Northwest, Washington, D. C.

RICH POLLOCK is fairly active in the activities of the Mayday Collective (MDC), Washington, D. C.

National Student Association

RICH POLLOCK is currently working for the National Student Association (NSA), and attended the recent NSA Convention in Colorado.

, United States National Student Association (NSA), announced on October 6, 1971, that students from more than thirty countries would meet at an International Conference, under the sponsorship of NSA, to be held on the campus of Georgetown University, Washington, D. C., during the period of October 14-16, 1971.

("The New York Times," October 7, 1971, page 29)

The primary focus of the discussions will be South Vietnam. Although the parley coordinator, RICHARD POLLOCK, stated the conference is not intended to be an anti-war conference, several anti-Thieu Vietnamese and anti-war Americans will take part.

("The Evening Star", Washington, D. C., October 13, 1971)

Miscellaneous

On February 27 and 28, 1971, a "National Meeting To End The Draft", was held at American University, Washington, D. C. Among those in attendance was RICH POLLOCK, a reporter for the Eagle, the weekly student newspaper at American University.

FOREIGN TRAVEL

World Assembly for Peace

The World Assembly for Peace was held at the Palais des Congres in Versailles, France on February 11-13, 1972. This assembly was an international peace meeting attended by representatives of 84 countries of the world who are against United States intervention.

Among those listed as representing the United States at the World Assembly for Peace was RICHARD POLLOCK of the National Student Association.

At this conference, a film was shown which depicted different types of American weapons which were captured by North Vietnamese in the Vietnam war. This film depicted such items as "cloth and pineapple bombs". It was also indicated during the conference that POLLOCK has slides of automated battlefield weapons, which are believed to have been reproduced from film.

the World Assembly for Peace, Marseilles, France, February 11-13, 1972, arrived [illegible] John F. Kennedy International Airport, New York.

A United States customs official advised that the above individuals carried anti-American literature making reference to the World Assembly for Peace. He further advised that the search of one RICHARD P. POLLOCK, white male, born September 13, 1951, long brown hair, five feet eight inches tall, slight build, hippie dress, reflected contents of POLLOCK's luggage as containing approximately forty airmail letters believed to be from prisoners of war. POLLOCK's residence was listed as South Union Road, Parsippany, New Jersey, and 1736 Lanier Place, N.W., Washington, D. C.

Passport Records

The files of the Passport Office, United States Department of State, Washington, D. C. (WDC), reviewed by [redacted] on February 25, 1972, disclosed that RICHARD PHILIP POLLOCK was issued passport number C-226044 on January 27, 1972, at Washington, D. C., for proposed travel to France, the listed purpose of the travel being business. In his application dated January 26, 1972, at Washington, D. C., POLLOCK stated his intention to depart via air on approximately January 29, 1972, for a stay abroad of approximately seven days. This passport was valid for five years travel to all countries except Cuba, North Korea, and North Vietnam.

This individual stated that he was born on September 13, 1951, at Newark, New Jersey. He gave his permanent residence as 8 Union Road, Parsippany, New Jersey, and his mailing address as United States National Student Association, 2115 South Street, N.W., Washington, D. C. He listed his parents as ROBERT POLLOCK and RAE SHERMAN born during February, 1925, at Warsaw, Poland., He stated that he was never married. In event of death or accident, he requested his father at his permanent residence be notified.

He further stated that he anticipated taking an additional trip abroad within one year.

The following description appears in his passport file:

Height:	5 feet 9 inches
Eyes:	Brown
Hair:	Brown,
Occupation:	Program Director

During the months of March and April, 1972, [redacted] I, who are familiar with certain aspects of New Left activity in the Metropolitan Washington, D. C. area, advised that they had no additional information concerning RICHARD PHILLIP POLLOCK.

DESCRIPTION

The following description of subject was obtained from [redacted]

Name:	RICHARD PHILLIP POLLOCK
Aliases:	RICH POLLOCK
Birth:	September 13, 1951 at Newark, New Jersey
Sex:	Male
Hair:	Brown, shoulder length
Eyes:	Brown, wears eyeglasses, near-sighted
Weight:	140 pounds
Height:	5 feet 9 inches
Build:	Slight
Residence:	1736 Lanier Place, N.W. Washington, D. C.
Occupation:	Program Director, United States National Student Association
Selective Service Number:	28-251-51-400, classified 1-A, record priority (not likely to be drafted), Local Board 251, Morristown, New Jersey
Social Security Number:	156-4409-16
Parents:	ROBERT MARTIN POLLOCK RAE BEATRICE POLLOCK, nee SHERMAN 8 Union Road, Parsippany, New Jersey

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

14 APR

Ms. Anne Pilsbury
Suite 200
1523 L Street, NW
Washington, DC 20005

Dear Ms. Pilsbury:

Your letter of 8 April 1976 on behalf of your client, Mr. Richard P. Pollock, was received on 12 April 1976. It is not our policy to permit people to appear before the Information Review Committee, but we will notify Mr. Pollock of the Committee's deliberations upon completion.

Sincerely,

Gene F. Wilson
Information and Privacy Coordinator

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

April 8, 1976

Mr. Gene F. Wilson
Central Intelligence Agency
Information Review Committee
Washington, D.C. 20505

Dear Mr. Wilson:

I am writing on behalf of Richard P. Pollock, my client, to request a review by the CIA Information Review Committee of the decision to withhold certain information sought by Mr. Pollock under the Freedom of Information Act and identified in your letter to him of March 19, 1976.

Mr. Pollock is anxious to determine, either through perusal of his CIA file or by a direct response from the Agency, whether he was ever under surveillance by the CIA while living in Washington, D.C. and, if so, the nature of this surveillance.

Mr. Pollock would like to have an opportunity to appear before the Information Review Committee when they consider his appeal. Would you be so kind as to let me know if this could be arranged?

Sincerely yours,

Anne Pilsbury

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Mr. Richard P. Pollock
1740 S Street, NW
Washington, DC 20009

19 MAR 1976

Dear Mr. Pollock:

This is in response to your request, dated 14 August 1975. We have completed a thorough search of our records and were able to locate the materials discussed below. These have been reviewed carefully and our determinations are as follows:

Enclosed, Tab A, is a copy of:

1. Article from the 24 April 1971 issue of The Washington Star.

It is being released to you in its entirety.

Enclosed also, Tab B, are copies of segregable portions of the documents listed below. Deletions in the originals were made under the exemption provisions of the Freedom of Information Act subsections which are given with each document cited. These are explained further below.

2.	Cable, dated 10 February 1972.	(b)(1), (b)(3), (b)(6)
3.	Memorandum, dated 17 February 1972.	(b)(1), (b)(3), (b)(6)
4.	Memorandum, Dated 21 March 1972.	(b)(1), (b)(3), (b)(6)
5.	Memorandum, dated 22 March 1972.	(b)(1), (b)(3), (b)(6)
6.	Memorandum, dated 6 April 1972.	(b)(1), (b)(3), (b)(6)

The following document is withheld in its entirety under provisions of exemptions (b)(1), (b)(3) and (b)(6):

7. Memorandum, dated 21 March 1972.

Mr. Charles A. Briggs, Chief of Services Staff, made the decisions cited above. As specified in the Freedom of Information Act, I am advising you of your right to appeal these decisions by addressing your appeal to the CIA Information Review Committee, via the undersigned.

Exemption (b)(1) applies to information which is properly classified pursuant to Section 1 of Executive Order 11652; and exempt from disclosure under Section 5(B) of that same Order; (b)(3) applies to the Director's statutory obligations to protect from disclosure intelligence sources and methods, as well as the organization, functions, names, official titles, salaries and numbers of personnel employed by the Agency, in accord with the National Security Act of 1947, and the CIA Act of 1949, respectively; and, (b)(6) applies to information release of which would constitute an unwarranted invasion of the personal privacy of other individuals.

In addition to the documents discussed above, our searches also surfaced some material which originated with the Federal Bureau of Investigation to which they have been identified for review and direct response to you.

We thank you for your patience and consideration.

Sincerely,

Gene F. Wilson
Information and Privacy Coordinator

Enclosures

Tab 4

WASHINGTON STAR

24 APR 1971

CIA Approves War Protest on Langley Grounds

A northern Virginia anti-war group has been given permission to demonstrate on the grounds of the Central Intelligence Agency next Wednesday.

Richard Pollock, a spokesman for Northern Virginia Mayday, said the demonstration is planned to protest the CIA's "chief role in the execution of American genocidal and biocidal missions in Southeast Asia."

CIA has given Northern Virginia Mayday authority to demonstrate on a selected section of its physical grounds in Langley, Va., Pollock said. Demonstrators will leaflet cars entering and leaving the grounds.

Plans call for them to rally at the Quaker meeting house, 8410 Georgetown Pike at 2 P.M. before shifting to the demonstration site at 3:00 P.M.

HEADQUARTERS

CHAOS

10 21 45z FEB 72

1.

A.

POLLOCK IN

ARGE INTERNATIONAL AFFAIRS NATIONAL STUDENT ASSOCIATION (NSA)

D COORDINATOR NSA INTERNATIONAL CONFERENCE ON VIETNAM WAR HELD

C OCT 71.

B.

C.

D.

7 FEB 1972

SUBJECT: Americans Listed as Participating at the World Assembly for Peace and Independence of the Peoples of Indochina, held 11-15 February 1972 in Paris, France (NL)

1. the following Americans were listed as participating in the World Assembly for Peace and Independence of the Peoples of Indochina:

Richard POLLOCK, National Students Association

21 March 1972

SUBJECT: Personalities Attending MAP

z. Richard POLLOCK....

Subject was at WAP. He flew Air India. He can be reached at 1736 Lanier Place NW in WDC and is with the National Student Assn.

He showed a slide show with films which he apparently had obtained from the North Viets re fragmentation bombs, tiger-claw mines, etc. The captions of the films were in French.

22 MAR 1972

Subject: Personality Reporting from MP

J. Richard POLLOCK . . .

On the third or fourth day of the Assembly POLLOCK
film and
had a copy of a slide show;

Some of the slides were about antipersonnel weapons.

6 April 1972

SUBJECT: World Assembly for Peace, etc

This list of U.S. delegates and observers
to the Paris World Assembly
was assembled by
the Credentials Committee of the U.S. delegation

* *

ABBREVIATIONS FOR ORGANIZATIONS

AFSC	American Friends Service Committee
CALCAV	Clergy & Laymen Concerned about Vietnam
CCAS	Committee of Concerned Asian Students
NPAC	National Peace Action Coalition
PCPJ	Peoples Coalition for Peace and Justice
WILPF	Peoples Peace Treaty
WSP	Women Strike for Peace
VVAW	Vietnam Veterans Against the War

Richard Pollock
1736 Lanier Pl. NW
Washington, D.C.

National Students Association
2115 S St. NW, Wash., DC

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755

Serial: N 9060A
31 MAR 1976

Ms. Anne Pilsbury
Suite 200, 1523 L Street, N.W.
Washington, D.C. 20005

Dear Ms. Pilsbury:

This replies to your letter of 12 February 1976 informing us of Mr. Richard Philip Pollock's association with the National Student Association, thus complementing information he had provided about himself in his earlier Freedom of Information Act request and aiding in our conduct of another search of our records. Our letter of 27 February 1976 requested from you a notarized certification from Mr. Pollock authorizing you to act in his behalf in this matter. That certification was received by this Agency on 16 March 1976. In accordance with 5 U.S.C. 552 as amended, this Agency's files have been searched and some records have been located that either make reference to or concern Mr. Pollock.

We cannot provide you access to, or release copies of, the records because they are classified and therefore exempt from access or release pursuant to Title 5 U.S.C. 552(b)(1). The records have been reviewed and are judged to be currently and properly classified in their entirety under criteria set forth in paragraph 2-303, DoD Regulation 5200.1-R, which implements Executive Order 11652. The records are currently and properly classified within the categories provided in Chapter 1, Section 5 of DoD Regulation 5200.1-R and Section 1 of Executive Order 11652. Further they are properly excluded from automatic downgrading and declassification according to the exemption categories provided in Chapter 3, Section 3 of DoD Regulation 5200.1-R and Section 5(b) of Executive Order 11652.

In addition, this Agency is precluded by law from providing information on specific results of its classified activities except to those persons authorized to receive such information. Title 5 U.S.C. 552(b)(3) exempts matters which are specifically protected from disclosure by statute. The appropriate statutes in this case are: Title 18 U.S.C. 798; Title 50 U.S.C. 403; and Section 6 of Public Law 86-36. DoD Directive 5400.7, Sections III and VI.C.3. specifically recognizes this exemption.

Serial: N 9060A

Your statements in the third paragraph of your letter about international telephone calls appear to concern the specific results of classified activities. The National Security Agency is precluded by 18 U.S.C. 798, from providing information on the specific results of its classified communications intelligence activities except to persons authorized to receive this information. The President and the heads of departments or agencies expressly designated by the President may authorize the persons who can receive classified communications intelligence information. The records available to this agency disclose that you have not been so authorized to receive classified information concerning the communications intelligence activities of the United States Government. Therefore, no information can be made available with respect to whether or not records of particular communications exist. The fact of the existence or non existence of such records is a properly classified matter. Any such intelligence records, if they existed, would be exempt from release by 5 U.S.C. 552(b)(1) for the same reasons as stated in the second paragraph above. Further, any such intelligence records, if they existed, would be exempt under 5 U.S.C. 552(b)(3) for the same reasons as stated in the third paragraph above.

No portion of the records located is reasonably segregable.

Your request is therefore denied on the basis of 5 U.S.C. 552(b)(1) and (3).

You are hereby advised that Section 2200.4 of Title 32 of the Code of Federal Regulations provides this Agency's appeals procedures. Section 2200.4 is quoted herein to advise you of those procedures:

"Section 2200.4 Appeals.

"Any person denied access to records may, within 30 days after notification of such denial, file an appeal to the Executive for Staff Services, National Security Agency/ Central Security Service. Such appeal shall be in writing addressed to the Executive for Staff Services, National Security Agency/Central Security Service, Fort George G. Meade, MD 20755, shall reference the initial denial of access issued by the Agency to the requester and shall contain in sufficient detail and particularity the grounds upon which the requester believes release of the information is required. The Executive for Staff Services shall respond to the appeal within 20 working days after receipt of the appeal."

Sincerely,

Norman Boardman

NORMAN BOARDMAN
Information Officer

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755

Serial: N 9060
27 FEB 1976

Ms. Anne Pilsbury
Suite 200, 1523 L Street, N. W.
Washington, DC 20005

Dear Ms. Pilsbury:

We have your letter of 12 February 1976, in which you request any information this Agency has concerning your client, Richard Philip Pollock.

We will search our records to determine if they contain such information. Before conducting a search, however, we must have a notarized certification from Mr. Pollock stating that you are authorized to act in his behalf.

Upon receipt of such certification, we will process your request in accordance with Title 5 U.S.C. 552 as amended by Public Law 93-502.

Sincerely,

for NORMAN BOARDMAN
Information Officer

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755

Serial: N 9217

4 SEP 1975

Mr. Richard P. Pollock
1740 S Street, N. W.
Washington, D. C. 20009

Dear Mr. Pollock:

This replies to your letter, dated 14 August 1975 and received here on 20 August 1975, which requests all documents, records and other items which this Agency may have filed under the name RICHARD PHILIP POLLOCK. You also request any other material this Agency may have acquired while investigating or monitoring any other person or organization in which your name was raised by this Agency's employees.

We have made a thorough search of our records and have been unable to locate information which we can confirm as relating to you based on the information you have provided. If you wish to provide additional information concerning any foreign activities you have been involved in or positions held, we will again review our records to determine if we have any records concerning you.

Sincerely,

Norman Boardman

NORMAN BOARDMAN
Information Officer

LAW OFFICES OF
COHEN & NOTERMAN, P. C.

NEIL J. COHEN
PETER A. NOTERMAN
ANNE PILSBURY

SUITE 200, 1523 L ST. N. W.
WASHINGTON, D. C. 20005

202 628-4195

June 3, 1976

Executive Staff Services
National Security Agency
Central Security Service
Fort George C. Meade
Maryland 20755

Re: FOIA Appeal of
Richard P. Pollock

Dear Sir:

This is in response to a letter of March 31, 1976, from Norman Boardman, Information Officer for NSA, informing me that NSA will not release any material on my client, Richard P. Pollock, on the grounds, inter alia, that the material is properly classified and that its release would violate 18 U.S.C. 798.

We would like to appeal this determination in toto and, in addition, we would ask that special consideration be given to informing Mr. Pollock whether or not his telephone conversations were at any time monitored by NSA. In connection with this latter request, I would point out that simply informing Mr. Pollock of whether or not he was under electronic surveillance, as opposed to the nature, manner or contents of the surveillance, would not seem to violate the letter or spirit of 18 U.S.C. 798.

Sincerely yours,

Anne Pilsbury

Anne Pilsbury

jeg

NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
FORT GEORGE G. MEADE, MARYLAND 20755

Serial: N9205
28 June 1976

Ms. Anne Pilsbury
Suite 200, 1523 L Street, N.W.
Washington, DC 20005

Dear Ms. Pilsbury:

This replies to your letter of 3 June 1976, in which you appeal on behalf of Richard P. Pollock the denial by the National Security Agency (NSA) Information Officer of your request for all documents, records and other items filed under the name Richard Phillip Pollock and material which may have been acquired while investigating or monitoring any other person or organization in which Mr. Pollock's name was involved.

I have reviewed the original request for information dated 14 August 1975, your letter of 12 February 1976, the affidavit of 11 March 1976 and the statement made in support of your appeal on behalf of Mr. Pollock. I have also reviewed the material that has been denied, the NSA Information Officer's denial and his reasons therefore.

Having completed these examinations, I have concluded that this information, which was obtained in the course of a lawful foreign intelligence operation, meets the criteria for classification in Section 1 of Executive Order 11652, and paragraph 2-303 of Department of Defense (DoD) Regulation 5200.1-R; that it is properly classified in its entirety within the categories provided in Chapter 1, Section 5 of DoD Regulation 5200.1-R and Section 1 of Executive Order 11652; and that it is properly excluded from automatic downgrading and declassification according to the exemption categories provided in Chapter 3, Section 3 of DoD Regulation 5200.1-R and Section 5 (b) of Executive Order 11652. Thus, I find that the NSA Information Officer properly found this information to be exempt from release pursuant to Title 5 U.S.C. 552 (b) (1), and I affirm his denial of your request for release of this information on these grounds.

The National Security Agency is precluded by Title 18 U.S.C. 798 from providing information concerning classified communications intelligence activities except to those persons authorized to receive such information. Title 50 U.S.C. 403 (d) (3) protects information pertaining to intelligence sources and methods. Section 6 of Public Law 86-36 provides that no law shall be construed to require the disclosure of

the organization or any function of the National Security Agency or any information with respect to the activities thereof (DoD Directive 5400.7, Sections III and VI. C. 3, specifically recognizes this exemption). Thus, I also find that the NSA Information Officer properly concluded that this information was exempt from release pursuant to Title 5 U.S.C. 552 (b) (3) since each of the statutes and the Directive cited above provides adequate grounds upon which to base such an exemption, and I therefore affirm his denial of your request for release of this information on these grounds.

With respect to your statements in the second paragraph of your letter of appeal, I must reaffirm that the National Security Agency is precluded by Title 18 U.S.C. 798 from providing information on the specific results of its classified communications intelligence activities except to persons authorized to receive this information. The records available to this Agency disclose that neither you nor Mr. Pollock have been authorized to receive classified information concerning the communications intelligence activities of the United States Government. Therefore, no information can be made available with respect to whether or not information concerning particular communications exist. As you have been informed by the NSA Information Officer, the fact of the existence or non-existence of records which contain such information is a properly classified matter. Any such intelligence records, if they existed, would be exempt from release pursuant to Title 5 U.S.C. 552 (b) (1) for the same reasons as stated in paragraph 3 above. Further, any such intelligence records, if they existed, would be exempt under Title 5 U.S.C. 552 (b) (3) for the same reasons as stated in paragraph 4 above.

In summary, I find the matter covered by your request is clearly within the statutory protections and exemptions cited above and that proper protection of intelligence sources and methods requires a denial of your appeal in its entirety. I have also concluded that no portion of the records that either make reference to or concern Mr. Pollock is reasonably segregable.

As your appeal is denied in its entirety, you are hereby advised of your rights under 5 U.S.C. 552 as amended by Public Law 93-502 to obtain judicial relief. You may seek an order from a United States District Court in the district in which you reside, in which you have your principal place of business, or in which this Agency's records are situated (U.S. District Court, District of Maryland), or in the District of Columbia, for the production of any Agency records which you consider to have been improperly withheld by this Agency. Section 2 of Public Law 93-502 sets out your rights in this matter with respect to such judicial action.

Sincerely,

John R. Harney

JOHN R. HARNEY
Freedom of Information
Appeal Authority

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

8 NOV 1978

Mr. Arthur I. Waskow
Public Resource Center
1747 Connecticut Avenue, N.W.
Washington, D.C. 20009

Dear Mr. Waskow:

This is in final response to your Privacy Act request of September 14, 1978, in which you requested copies of records relating to you, maintained by the Central Management Services Staff (CMSS) of the Office of Management and Finance (OMF).

A thorough search of the deactivated and secured Inter-Divisional Information System (IDIS) indicated the existence of eight (8) 5x8 cards which contained information relating to you. Information contained on these cards is retrievable by the names of other individuals in addition to you. These names have been deleted inasmuch as we believe that they are outside the scope of your request; and, that such release to third parties without assuring the accuracy and relevancy of these records would constitute clearly unwarranted invasions of their personal privacy. With the exceptions of the withheld information detailed above, the eight (8) cards have been reproduced and are enclosed for your review.

In the event you believe that the excised portions of these cards are available to you pursuant to the Privacy Act of 1974 (5 U.S.S. §552[a]), you may appeal this decision within thirty (30) days by writing to the Freedom of Information/Privacy Unit, Department of Justice, Washington, D.C. 20530. The envelope and letter should be clearly marked "PRIVACY APPEAL - DENIAL OF ACCESS."

Sincerely,

R. A. Cunningham, Director
Central Management Services Staff
Office of Management and Finance

Enclosures (8)

Assistant Attorney General
Criminal Division

FOI/CRM 1805

Department of Justice
Washington 20530

January 13, 1977

Mr. Arthur Waskow
Institute for Police Studies
1901 Que Street, N.W.
Washington, D.C. 20009

Dear Mr. Waskow:

The Federal Bureau of Investigation, in processing your request for records, has referred to us, for review and direct response to you, copies from its files of two documents which originated in the Internal Security Division (which is now a part of the Criminal Division) of the Department of Justice.

The first document (a one-page memorandum dated November 12, 1971, from the Assistant Attorney General to the Director, FBI, together with an envelope and a two-page letter dated October 29, 1971, from Melvin Wulf to the Attorney General) is available to you in full.

The second document (a two-page memorandum dated February 16, 1972, from the Assistant Attorney General to the Director, FBI) is available to you in part. Portions of the document have been deleted pursuant to the following exemptions of the Freedom of Information Act: 5 U.S.C. 552(b)(1), (2), (7)(C) and (7)(D). These exemptions pertain to material which is (1) properly classified; (2) related solely to the internal practices of the Department of Justice; and (7) investigatory material compiled for law enforcement purposes, the release of which would (C) constitute an unwarranted invasion of personal privacy or (D) reveal the identity of a confidential source or information furnished only by a confidential source.

Copies of the documents are enclosed.

Pursuant to Title 5, United States Code, Section 552(a)(6)(A) and 28 Code of Federal Regulations, Section 16.7(a) you have a right to appeal this denial of your request. This appeal must be made within thirty days in writing and addressed to the Attorney General (Attention: Freedom of Information Appeals Unit) Department of Justice, Washington, D.C. 20530. The envelope and letter should be clearly marked, "Freedom of Information Appeal" or "Information Appeal." If on appeal your request is denied, judicial review will thereafter be available to you in the district in which you reside or have your principal place of business or the district in which the records denied to you are situated or the District of Columbia.

Sincerely,

Robert L. Keuch

ROBERT L. KEUCH
Deputy Assistant Attorney General

FOI/CRM 1805

Mr. Arthur Waskow
Institute for Police Studies
1901 Que Street, N.W.
Washington, D.C. 20009

Dear Mr. Waskow:

The Federal Bureau of Investigation, in processing your request for records, has referred to us, for review and direct response to you, copies from its files of two documents which originated in the Internal Security Division (which is now a part of the Criminal Division) of the Department of Justice.

The first document (a one-page memorandum dated November 12, 1971, from the Assistant Attorney General to the Director, FBI, together with an envelope and a two-page letter dated October 29, 1971, from Melvin Wulf to the Attorney General) is available to you in full.

The second document (a two-page memorandum dated February 16, 1972, from the Assistant Attorney General to the Director, FBI) is available to you in part. Portions of the document have been deleted pursuant to the following exemptions of the Freedom of Information Act: 5 U.S.C. 552(b)(1), (2), (7)(C) and (7)(D). These exemptions pertain to material which is (1) properly classified; (2) related solely to the internal practices of the Department of Justice; and (7) investigatory material compiled for law enforcement purposes, the release of which would (C) constitute an unwarranted invasion of personal privacy or (D) reveal the identity of a confidential source or information furnished only by a confidential source.

Copies of the documents are enclosed.

Pursuant to Title 5, United States Code, Section 552(a)(6)(A) and 28 Code of Federal Regulations, Section 16.7(a) you have a right to appeal this denial of your request. This appeal must be made within thirty days in writing and addressed to the Attorney General (Attention: Freedom of Information Appeals Unit) Department of Justice, Washington, D.C. 20530. The envelope and letter should be clearly marked, "Freedom of Information Appeal" or "Information Appeal." If on appeal your request is denied, judicial review will thereafter be available to you in the district in which you reside or have your principal place of business or the district in which the records denied to you are situated or the District of Columbia.

Sincerely,

ROBERT L. KEUCH
Deputy Assistant Attorney General

Form DJ-150a
(Ed. 4-26-64)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

TO : Director
Federal Bureau of Investigation

DATE: November 12, 1971

FROM : Robert C. Mardian
Assistant Attorney General
Internal Security Division

SUBJECT:
Dr. Arthur I. Waskow - Recent correspondence

Reference is made to the attached correspondence directed to the Attorney General from attorneys of the American Civil Liberties Union, on behalf of Dr. Waskow. The letter requests the production of a file on Dr. Waskow alleged to be maintained by this Division, and sets forth a passage alleged to be taken from said file.

This Division is in the process of formulating a response to this correspondence. In this connection, it would be helpful if your Bureau could ascertain whether this request could, in some way, have resulted from the recent theft of documents from the Resident Agency in Media, Pennsylvania. Specifically, we would like to know if any of the stolen documents contained references to Dr. Waskow, and if so, we would like to receive copies of such documents. Your prompt response will be appreciated.

Attachment

AMERICAN CIVIL LIBERTIES UNION

156 Fifth Avenue New York, N.Y. 10010 (212) 675-5990

October 29, 1971

RECEIVED

NOV 3 1971

Correspondence Control Unit
Internal Security Division

Hon. John N. Mitchell
Attorney General of the United States
Department of Justice
Washington, D.C.

Dear Sir:

We have been retained by Dr. Arthur I. Waskow, Resident Fellow of the Institute for Policy Studies, Washington, D.C., to obtain a file concerning him which has been prepared and is being maintained by the Internal Security Division of the Department of Justice.

Dr. Waskow believes that the Internal Security Division has collected, maintained and disseminated information concerning him solely because of his constitutionally protected activities as a well known opponent of the war being waged in Southeast Asia by the government of the United States. He has expressed his opposition to that war in a large number of publications, public statements and public speeches, all of which are activities protected by the First Amendment.

The records in the possession of the Internal Security Division pertaining to Dr. Waskow are clearly identifiable, within the meaning of Title 5, United States Code, Section 552(a)(3), and accordingly should be made promptly available to him. An example of the information contained in Dr. Waskow's file appears in a Department of Justice memorandum prepared some time prior to November 15, 1969. The memorandum was prepared ostensibly to assess "the potential for violence during the week-end of November 13-15 in Washington, D.C. in connection with the activities planned by the New Mobilization Committee to End the War in Vietnam." The memorandum contains the following paragraph about Dr. Waskow, a member of the New Mobilization steering committee:

146-200-38627
DEPARTMENT OF JUSTICE
26 NOV 3 1971

Edward J. Ennis, Chairman, Board of Directors • Ramsey Clark, Chairman, National Advisory Council
Aryeh Neier, Executive Director Legal Department: Melvin L. Wulf, Legal Director • Sanford Jay Rosen, Assistant Legal Director • Staff Counsel: Joel Gora • Lawrence Sager • Marilyn Hall • Michele Hermann

> "Arthur Waskow is a Trustee and Resident Fellow of the Institute for Policy Studies in Washington, D.C. The Institute opposes the Vietnam war, the draft, the military community and supports the programs of the New Left and black extremists. Waskow himself advocates "creative disorder." In 1962 in Washington he met with a Russian intelligence officer attached to the Soviet Embassy, and in Switzerland with an official of the Polish Embassy." [Emphasis added.]

Dr. Waskow maintains that the statement that "[i]n 1962 in Washington he met with a Russian intelligence officer attached to the Soviet Embassy, and in Switzerland with an official of the Polish Embassy," is false. Since the maintenance and dissemination of such erroneous information by the Internal Security Division is extremely damaging to the reputation and security of our client, I hereby formally request, pursuant to Title 5, U.S.C., Section 552(a)(3), that you make promptly available to Dr. Waskow all dossiers, reports and information maintained by the Internal Security Division concerning his private, public and professional life so that he may review all such information.

I urge your prompt compliance with this formal request in accordance with the terms of Section 552(a)(3).

Yours sincerely,

Melvin L. Wulf
Legal Director

Ralph J. Temple
Legal Director
American Civil Liberties Union Fund

MLW:bg

American Civil Liberties Union Fund
Of The National Capital Area
SUITE 801 1424 16TH STREET, N.W.
WASHINGTON, D. C. 20036

NOV 2 71
D.C.
2.08

Hon. John N. Mitchell
Attorney General of the
United States
Department of Justice
Washington, D.C. 20210

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

5 MAY 1977

Ms. Anne Pilsbury
Attorney at Law
1712 N Street NW
Washington, DC 20036

Dear Ms. Pilsbury:

As a result of your request to the Federal Bureau of Investigation, dated 17 December 1975, on behalf of your client, Sammie Abdullah Abbott, the Bureau referred two documents to this Agency for review and direct response to you.

One document, a memorandum dated 25 September 1970, is being withheld in its entirety pursuant to the exemption provisions of Privacy Act subsection (j)(1). The second document, a memorandum dated 12 November 1970, is also being withheld in its entirety pursuant to the exemption provisions of Privacy Act subsection (j)(1) and, moreover, to protect the privacy of other individuals.

Subsection (j)(1), in this case, applies to documents, release of which would disclose intelligence sources and methods, including names of Agency employees and organizational components.

As specified in the Privacy Act, I am advising you of your right to appeal the above decision by addressing your appeal to the undersigned. I will bring it to the attention of the appropriate senior official.

We thank you for your patience and consideration.

Sincerely,

Gene F. Wilson
Information and Privacy Coordinator

DEPARTMENT OF THE ARMY
US ARMY INTELLIGENCE AGENCY
US ARMY INTELLIGENCE AND SECURITY COMMAND
FORT GEORGE G. MEADE, MARYLAND 20755

MIIA-CAF

21 March 1977

SUBJECT: Privacy Act Request

Ms Anne Pilsbury
Attorney at Law
1712 N. Street, NW
Washington, D.C. 20036

1. Reference is made to your letter, dated 17 December 1975, to the Federal Bureau of Investigation (FBI), requesting a copy of all information concerning Mr. Sammie Abdullah Abbott. On 10 March 1977, the FBI referred your request, along with Army-originated documents pertaining to Mr. Abbott, to this office. This referral was received on 14 March 1977.

2. The reports referred to this office by the FBI have been reviewed, determined to be releasable and are forwarded herewith. Fees for the reproduction of the inclosed material have been waived.

3. Some of the records in this material have been sanitized to delete the names and other identifying data on individuals contacted during the personnel security investigation on Mr. Abbott. The identities of individuals who provide information in the course of a lawful national security intelligence investigation under an expressed or inferred pledge of confidentiality are exempt from disclosure under 5 USC 552a(k)(5). The material is also exempt from the mandatory public disclosure requirements of the Freedom of Information Act, per 5 USC 552(b)(7)(D). Unless the source agrees to the disclosure of his identity or that identity is otherwise disclosed, this pledge of confidentiality must be maintained in view of its significance to the investigative purposes and process. The sanitization of source identities constitutes a partial denial of Mr. Abbott's request by the properly designated Access and Amendment Refusal Authority (AARA) and he is hereby advised that he has the right to appeal this partial denial to the Secretary of the Army after his review of the material. If he wishes to file an appeal, he should forward it to this office for necessary processing:

Freedom of Information Center
US Army Intelligence Agency
US Army Intelligence and Security Command
ATTN: MIIA-CAF
Fort Meade, Maryland 20755.

MIIA-CAF
SUBJECT: Privacy Act Request

21 March 1977

The outer envelope forwarding Mr. Abbott's appeal should be marked "Privacy Act Appeal" to insure prompt handling.

4. In addition, one page of Mr. Abbott's records has been sanitized to delete information concerning an individual other than Mr. Abbott. Disclosure of this information without the authorization of the individual concerned could violate personal privacy rights under the provisions of 5 USC 552(b)(7)(C).

5. If you have any further questions, you may contact this office at the above address. The telephone numbers are Area Code 301, 677-4501/4743.

FOR THE COMMANDER:

THOMAS F. CONLEY
Chief, Freedom of Information Center

1 Incl
as

CF:
HQDA(DA-OGC)

MIIA-CAF 21 March 1977

SUBJECT: Privacy Act Request

Ms Anne Pilsbury
Attorney at Law
1712 N. Street, NW
Washington, D.C. 20036

1. Reference is made to your letter, dated 17 December 1975, to the Federal Bureau of Investigation (FBI), requesting a copy of all information concerning Mr. Sammie Abdullah Abbott. On 10 March 1977, the FBI referred your request, along with Army-originated documents pertaining to Mr. Abbott, to this office. This referral was received on 14 March 1977.

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Freedom of Information Center
US Army Intelligence Agency
US Army Intelligence and Security Command
ATTN: MIIA-CAF
Fort Meade, Maryland 20755.

MIIA-CAF 21 March 1977
SUBJECT: Privacy Act Request

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5. If you have any further questions, you may contact this office at the above address. The telephone numbers are Area Code 301, 677-4501/4743.

FOR THE COMMANDER:

1 Incl
as

THOMAS F. CONLEY
Chief, Freedom of Information Center

CF:
HQDA(DA-OGC)

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

March 14, 1977

Mr. Sam Abbott
Publicity Director
Energy Committee on the
Transportation Crisis
1015 Dupont Circle Building
1346 Connecticut Avenue, N. W.
Washington, D. C. 20036

Dear Mr. Abbott:

This is in further reference to your Freedom of Information-Privacy Acts request and my letter of February 8, 1977.

The Emergency Committee on the Transportation Crisis was the subject of a racial matters investigation from 1969 until 1971.

Enclosed are copies of documents from our files. Excisions have been made from these documents in order to protect materials which are exempted from disclosure by the following subsection of Title 5, United States Code, Section 552:

(b)(2) materials related solely to the internal rules and practices of the FBI;

(b)(7) investigatory records compiled for law enforcement purposes, the disclosure of which would:

(C) constitute an unwarranted invasion of the personal privacy of another person;

(1)

Mr. Sam Abbott

(D) reveal the identity of an individual who has furnished information to the FBI under confidential circumstances or reveal information furnished only by such a person and not apparently known to the public or otherwise accessible to the FBI by overt means.

You have thirty days from receipt of this letter to appeal to the Attorney General from any denial contained herein. Appeals should be directed in writing to the Attorney General (Attention: Freedom of Information Appeals Unit), Washington, D. C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal."

Sincerely yours,

Clarence M. Kelley
Director

Enclosures (48)

(2)

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

February 8, 1977

Ms. Anne Pilsbury
Attorney at Law
1712 N Street, N. W.
Washington, D. C. 20036

Dear Ms. Pilsbury:

This is in reference to the Freedom of Information-Privacy Acts (FOIPA) request of your client, Mr. Sam Abbott, and your letter of December 17, 1976.

The records pertaining to the Emergency Committee on the Transportation Crisis have been processed, and documents available for release consist of 156 pages. Records pertaining to Mr. Sam Abbott are currently being reviewed and are not yet available for release.

You mentioned in prior correspondence Mr. Abbott's willingness to review the files he requested at FBI Headquarters. If this procedure is still desired, please contact Special Agent John F. Loome, Jr., 324-5773, to make an appointment.

If copies of any pages are desired, there will be a fee of ten cents per page pursuant to Title 28, Code of Federal Regulations, Sections 16.9 and 16.46. Upon receipt of a check or money order, payable to the Federal Bureau of Investigation, the pages desired will be furnished.

Sincerely yours,

Clarence M. Kelley
Director

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

December 8, 1976

Ms. Anne Pilsbury
Attorney at Law
Cohen and Noterman, P. C.
Suite 200
1523 L Street, N. W.
Washington, D. C. 20005

Dear Ms. Pilsbury:

This is in reference to your letter dated September 16, 1976, containing the notarized authorization from your client, Sam Abbott.

As a result of a preliminary review of documents pertaining to your Freedom of Information-Privacy Acts (FOIPA) request, it is believed that processing of these documents may result in charges in excess of $25. Department of Justice Regulations (Title 28, Code of Federal Regulations, Part 16.46) require notification to a requester when anticipated charges exceed $25. This letter constitutes such notification.

I must caution, however, that your indication of approval and consent to incur such fees will not necessarily result in the entire contents of our records being disclosed to you, since we are guided by the provisions of the Freedom of Information Act (Title 5, United States Code, Section 552) and the Privacy Act of 1974 (Title 5, United States Code, Section 552a) in disclosing materials from our records.

Accordingly, before taking action, I will await receipt of written notification from you indicating willingness to pay fees in excess of $25 in connection with the processing of your request.

Sincerely yours,

Clarence M. Kelley
Director

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

August 25, 1976

Ms. Anne Pilsbury
Attorney at Law
Cohen and Noterman, P. C.
Suite 200
1523 L Street, N. W.
Washington, D. C. 20005

Dear Ms. Pilsbury:

This is in reference to my letter to you dated January 15, 1976.

In order that we may comply with your request, it will be necessary that you furnish a notarized authorization from your client, Mr. Sammy Abdullah Abbott, directing us to release to you any information pertaining to your client.

I am sure you can appreciate this requirement as it is designed to insure that information in our files is released only to the correct individual.

Please be advised that no processing will commence until the notarized authorization is received.

Sincerely yours,

Clarence M. Kelley
Director

OFFICE OF THE DIRECTOR

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

January 15, 1976

Ms. Anne Pilsbury
Attorney at Law
Cohen and Noterman, P. C.
Suite 200
1523 L Street, N. W.
Washington, D. C. 20005

Dear Ms. Pilsbury:

This is to acknowledge receipt of your Freedom of Information-Privacy Acts (FOIPA) request on behalf of your client, Mr. Sammie Abdullah Abbott, received by the FBI on December 19, 1975.

An exceedingly heavy volume of FOIPA requests has been received these past few months. Additionally, court deadlines involving certain historical cases of considerable scope have been imposed upon the FBI. Despite successive expansions of our staff responsible for FOIPA matters, substantial delays in processing requests continue.

The FBI has 5,964 FOIPA requests on hand. Processing has begun, and is in various stages of completion on 991 of those cases. In an effort to deal fairly with any request requiring the retrieval, processing and duplication of documents, each request is being handled in chronological order based on the date of receipt. Please be assured that your request is being handled as equitably as possible and that all documents which can be released will be made available at the earliest possible date.

Your patience and cooperation will be appreciated.

Sincerely yours,

Clarence M. Kelley
Director

December 17, 1973

Freedom of Information Unit
Federal Bureau of Investigation
J. Edgar Hoover Building
Washington, D.C. 20535

This is a request pursuant to the Freedom of Information Act, as amended, for any files or other material you have on:

[redacted]

Mr. [redacted] has authorized us, in his accuracy to forward his request to you. [redacted]

As Mr. [redacted] advises, he believes [redacted] to date back roughly as far as the 1950's. He has been active in political and community activities in the Washington, D.C. area. I would recommend that you search systems designated as JUSTICE/CRIM-010 and JUSTICE/FBI-002 be checked for his files.

The DCWU is a Washington, D.C. community organization concerned with transportation issues. [redacted] Abbott is its principal spokesperson. It was organized in the early 1970's.

In order to avoid excessive copying expenses, Mr. Abbott requests that you make both his own files and any DCWU files available for his review at your offices, or any other suitable location, so that he may determine if he wishes to pay for copying.

We look forward to hearing from you within ten days.

Sincerely yours,

[redacted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

ORDER

Upon consideration of plaintiffs motion for reconsideration of this Court's October 29, 1981 and November 9, 1979 decisions, and it appearing that such motion should be granted, it is this _____day of _____, 1981

ORDERED that plaintiffs' motion for reconsideration be and hereby is granted.

_____
JUDGE

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion for reconsideration, memorandum in response to order dated October 29, 1981, and proposed order were mailed to David White, Civil Division, Department of Justice, Washington, D.C. 200530 and Laura Bonn, Assistant Corporation Counsel, District Building, 14th and E Streets, N.W., Washington, D.C. 20004, this 6th day of November, 1981.

Daniel M. Schember

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,

Plaintiffs,

v.

JERRY WILSON, et al.,

Defendants.

Civil Action
No. 76-1326

FILED

NOV 10 1981

JAMES F. DAVEY, CLERK

ORDER

This matter having come before the Court on motion by the federal defendants for leave to file their pretrial brief one day out of time, and the Court being fully advised in the premises, it is this 9th day of November, 1981,

ORDERED that the motion for leave to file the pretrial brief be, and hereby is, granted.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

RECEIVED NOV 1 4 1981

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,

Plaintiffs,

v.

JERRY WILSON, et al.,

Defendants.

Civil Action No. 76-1326

FILED
NOV 12 1981
JAMES F. DAVEY, CLERK

ORDER

Upon consideration of plaintiffs' motion for leave for voluntary dismissal of certain defendants, and it appearing that such motion should be granted, it is this 12th day of November 1981 hereby

ORDERED: That plaintiffs' motion for leave for voluntary dismissal of certain federal defendants be granted; and it is further

ORDERED: That plaintiffs' claims against defendants Robert Kunkel, Terry T. O'Connor, Charles Sawyer, Robert Yates, Robert Feuer, David Rarity, Peter Gullota, Jr., Joseph Keller, Hilmer Krebs, Paul Lamberth, Robert Olmert, Edward Rudiger, John Stanley, Edwin Waite, and Clarence Kelley be dismissed with prejudice.

Louis F. Oberdorfer
UNITED STATES DISTRICT JUDGE

RECEIVED NOV 1 1 1981

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

MEMORANDUM BY FEDERAL DEFENDANTS IN OPPOSITION TO PLAINTIFFS' "MOTION FOR RECONSIDERATION" AND IN RESPONSE TO THE COURT'S ORDER OF OCTOBER 29, 1981

By Memorandum and Order filed on October 29, 1981, this Court directed the parties to address various specific questions related to the issues of fraudulent concealment and the statute of limitations. Plaintiffs responded to this direction by moving for reconsideration of this Court's Orders of November 9, 1979, and October 29, 1981.*/ Specifically, plaintiffs request this Court to declare that no statute of limitations is applicable to this civil action. In addition, plaintiffs argue that it was not until the publication of the Final Report of the Senate Select Committee To Study Governmental Operations with Respect To Intelligence Activities, April, 1976, "that the material facts concerning plaintiffs' claims were revealed."**/

These arguments are legally and factually without basis.

I. The District of Columbia Statute of Limitations Is Applicable To This Action

The law of this Circuit is that the District of Columbia statute of limitations is applicable to actions against federal officers for alleged violation of constitutional rights, for which actions there is no federal statute of limitations. Fitzgerald v. Seamans, 553 F.2d 220 (D.C. Cir. 1977); Smith v. Nixon, 606 F.2d 1183 (D.C. Cir. 1979); Church of Scientology of California v.

*/ The Orders of November 9, 1979, and October 29, 1981, were denials of motions by federal defendants to dismiss and for judgment on the pleadings. Federal defendants do not object to reconsideration of the denial of their motions, but it is doubtful that that is the salutary end to which plaintiffs truly strive.

**/ Plaintiffs' Memorandum In Response To Order Dated October 29, 1981, at page 11.

Foley, 640 F.2d 1335 (D.C. Cir. 1981). This rule is precisely consistent with the holdings of Johnson v. Railway Express Agency, 421 U.S. 454 (1975), and Board of Regents v. Tomanio, 446 U.S. 478 (1980).

Plaintiffs have presented no argument that would justify ignoring the profound policies underlying statutes of limitations:

> Statutes of limitations, which "are found and approved in all systems of enlightened jurisprudence," represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that "the right to be free of stale claims in time comes to prevail over the right to prosecute them." These enactments are statutes of repose; and although affording plaintiffs what the legislature deems a reasonable time to present their claims, they protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise . . . . We should regard the plea of limitations as a "meritorious defense, in itself serving a public interest."

United States v. Kubrick, 444 U.S. 111, 117 (1979) (citations omitted).

II. This Action Is Barred

In defending against the assertion that this action is barred by the statute of limitations, plaintiffs have contended that "[i]t was not until the Church Committee reports were published in April 1976 that the material facts concerning plaintiffs' claims were revealed." (Plaintiffs' Memorandum, at 11.)

The first flaw in this statement is that it does not correctly state the legal standard applicable to the issue of when a concealment of a cause of action ends. As stated in Fitzgerald v. Seamans, 384 F. Supp. 688, 693-94 (D.D.C. 1974), a potential plaintiff is not entitled to wait passively until all material facts have been presented to him before he is required to move into action. In other words, the limitations period begins to run, and the concomitant obligations to proceed toward commencing an action arise, when the potential plaintiff has reasonable

notice of, or by due diligence should have known, facts and actions which may constitute a cause of action.*/

The second flaw in plaintiffs' contention is its demonstrable falseness. If it were true that the publication of the Church Committee Report in April, 1976, was the occasion upon which plaintiffs first obtained the information leading them to believe they had claims justifying commencement of this civil action, then the following propositions would reasonably be expected to be true:

1. Plaintiffs' attorneys would have begun only after April, 1976, to prepare for commencement of this civil action.

2. The individual plaintiffs, in their responses to discovery, would have identified the publication of the Report as the principal, if not the sole, impetus for filing suit.

3. The Complaint, or the initial responses to discovery, would have contained details gleaned from the Report deemed material to the causes of action, such as the actions complained of, the injuries suffered, and the identities of the defendants.

4. Few, if any, of the principal claims made by plaintiffs would have been based on information not contained in the Church Committee Report.

Taking each of the foregoing propositions in order, it is evident that each and every one is false:

1. Attorneys David Rein and Anne Pilsbury had begun by at least October, 1975, to gather materials for the commencement of an action against the Federal Bureau of Investigation and the Metropolitan Police Department for alleged break-ins, wiretaps, planting informants, and surveillance. The October-November, 1975, issue of the Washington Peace Center Newsletter (Exhibit A) states, "Attorney David Rein has volunteered his help in suing for damages in the break-ins and other illegal police state activities '

*/ The concept of "discovery and due diligence" as described in Fitzgerald v. Seamans, supra, assumes a concealment. In this case, plaintiffs have shown no legal or fiduciary obligation of defendants to disclose facts to plaintiffs, nor have they alleged any overt or affirmative acts of concealment. Plaintiffs have alleged concealment; however, mere silence is not concealment which tolls the running of the limitations period. General Aircraft Corp. v. Air America, Inc., 482 F. Supp. 3, 8 (D.D.C. 1979).

that occured (sic) during the height of the Peace Movement."*/ In other words, the decision to commence this action was made at least six months prior to the publication of the Church Committee Report in April, 1976.

2. In his answer to the first set of interrogatories by the federal defendants,**/ plaintiff Julius Hobson listed the Church Committee Report as one of several documents and publications which led him to believe that he had been the subject of FBI surveillance. The other plaintiffs, in their responses to the same set of interrogatories, incorporated this response by reference. Not one plaintiff, however, described a single event or category of activity which they claimed to have discovered in the Church Committee materials. In addition, each of the plaintiffs was asked at deposition when filing suit was first considered.***/ Not one plaintiff mentioned the Church Committee Report as playing any role in the considerations.

3. (a) When the original Complaint was filed, eleven FBI defendants were named. Only two of these had been mentioned in the Church Committee Report, viz., William C. Sullivan and Charles D. Brennan. Even as to them, no specific act or activity, apart from the general subject of COINTELPRO-New Left, was mentioned in the Complaint. In responding to federal defendants' initial rounds of discovery, no plaintiff referred to the Church Committee Report as the basis for the claims against defendants Brennan and Sullivan.

(b) Plaintiffs have stated in their Pretrial Brief, Facts To Be Proven, that defendant George C. Moore participated in efforts to disrupt the Poor People's Campaign, which efforts

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*/ This document was produced by plaintiff Washington Peace Center's Supplemental Response to Federal Defendants' Second Request for Production of Documents, served April 21, 1978.

**/ See Answers filed October, 1976. Mr. Hobson's response was no more specific than stating that the Church Committee Report disclosed that various peace organizations and the Poor People's Campaign had been the subject of surveillance by the FBI.

***/ See deposition transcripts of plaintiffs as follows: Abbott, at 5; Bloom, at 5; Booker, at 13; Eaton, at 12-16; Hobson, at 9-10; Pollock, at 16; Waskow, at 5.

plaintiff Eaton claims injured him because he was involved in planning the Poor People's Campaign. (See Plaintiffs' Pretrial Brief, at 16-17.) This charge is based on FBI documents published by the Church Committee in Vol. 6 of its Hearings, a publication included in plaintiff Julius Hobson's list. (See Hearings, Vol. 6, at 767-780.) Defendant Moore's name appears on each document as the recommending official; however, George C. Moore was not named as a defendant in the original complaint. Furthermore, he was named as a defendant in the Amended Complaint only because he had been identified in federal defendants' answers to interrogatories as having been responsible for the supervision of the Key Extremist and Key Black Extremist programs.*/ He was made a defendant for reasons having nothing to do with the alleged effort to disrupt the Poor People's Campaign, and the issue of this allegation did not arise in this litigation until early in 1981.

(c) In addition to the issue of the Poor People's Campaign, plaintiffs' Pretrial Brief alleges the following specific acts which are referred to in the Church Committee Report:

> (i) Defendant Brennan directed poison pen letter efforts to ridicule the inauguration demonstrations and the NMC.
>
> (ii) Defendant Brennan directed poison pen letter efforts to sow division and tension among members of the NMC Steering Committee, which included plaintiffs Waskow and Bloom.

See Plaintiffs' Pretrial Brief, at 17. Even though the particular events referred to here were described in the Church Committee Report, plaintiffs did not introduce them as issues in this action until October 22, 1981, the day the Pretrial Brief was filed.**/

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*/ Response By Defendants Kelley And Stames, In Their Official Capacities, To Plaintiffs' First Set of Interrogatories, December 8, 1976, Interrogatory No. 6.

**/ See Motion By Federal Defendants To Strike Portions of Plaintiffs' Pretrial Brief, and attached exhibits, filed November 3, 1981.

(d) Except for the matters referred to in (b) and (c), above, there is no specific act or event described in Plaintiffs' Pretrial Brief which is described in the Church Committee Report.

4. Plaintiffs' responses to discovery show that the allegations of electronic surveillance, break-ins, use of informants by the FBI, physical surveillance, and investigation of political activities are not based on the Church Committee Report. Furthermore, specific matters about which plaintiffs complain are not mentioned in the Church Committee Report. These include the publication of the anonymous newsletter The Rational Observer, the alleged interference with radio communications at the 1969 Inauguration demonstrations, the alleged abuse of housing forms at the 1969 Inauguration demonstrations, and the alleged effort to exploit the "head-tax" dispute between the Black United Front and the National Mobilization Committee.

As the foregoing discussion demonstrates, the publication of the Church Committee Report in April, 1976, was not the occasion on which plaintiffs discovered they had a potential cause of action. In fact, the contents of the Report appear to have been insignificant to this litigation until the beginning of 1981 when plaintiffs began using it for purposes of framing discovery demands. The relevant inquiry becomes, therefore, whether some other event or series of events occurred after July 16, 1973, which, first put plaintiffs on notice that they had a potential cause of action. Plaintiffs have not suggested any such event; however, the facts, documents, and testimony which federal defendants have submitted or referred to in support of their motion for judgment on the pleadings*/ demonstrate that plaintiffs had sufficient information prior to July 16, 1973, to put them on notice of a cause of action. Plaintiffs have no credible defense against the statute of limitations and the action is barred.

*/ See also Defendant Terry O'Connor's Motion For Judgment On The Pleadings.

III. Plaintiffs' Specific Arguments Do Not Demonstrate That The Bar of Limitations Is Avoided In This Action

The foregoing having been said, a few final points must be addressed.

1. Plaintiffs observe that some of their allegations have not led to assertable claims. (Plaintiffs' Memorandum, at 21 fn. 10.) Whatever point plaintiffs are trying to make, it is irrelevant to the application of the statute of limitations. The bar of limitations applies even if a claim is otherwise meritorious, see United States v. Kubrick, 444 U.S. 111 (1979); conversely, the fact that plaintiffs have brought an ultimately unmeritorious cause of action should not protect them from the effects of the statute.

2. Plaintiffs state that they discovered certain acts and events only after they filed suit. (E.g., Plaintiffs' Memorandum, at 22.) This circumstance does not protect the action from being barred. Fitzgerald v. Seamans, 384 F. Supp. 688 (D.D.C. 1974), clearly holds that not all facts need be known prior to commencement of the action, for the finding of facts is the function of notice pleading and liberal discovery. With respect to the application of limitations, the issue is when did plaintiffs know, or by due diligence should have known, of the existence of a potential cause of action. The later discovery of additional details does not alter that issue.

3. Plaintiffs state that prior to acquiring knowledge of certain "material facts" they had only vague suspicions and to have initiated a suit on such a basis would have led to dismissal of the action. (Plaintiffs' Memorandum, at 21.) This contention is hypothetical and unamenable to exact analysis; however, the so-called "material facts" described by plaintiffs are legal questions*/ and

*/ Plaintiffs' Memorandum, at 21, states:

> The material facts needed to establish a claim of illegal surveillance include (1) that the surveillance was conducted for the purpose of suppressing constitutional rights; (2) that it was conducted for a purpose unauthorized by statute or executive order; (3) that the surveillance employed intrusive techniques or intrusions into private meetings; and/or (4) that the scope, intensity, or duration of the surveillance exceeded that necessary to the accomplishment of any legitimate law enforcement purpose.

have nothing to do with plaintiffs' knowledge or suspicions of the facts of surveillance, break-ins, use of informants, or the other elements of their claims. Furthermore, whether an earlier suit would have been dismissed is an issue of the merits of the claim and is irrelevant to the application of limitations.

4. Plaintiffs assert that the "head-tax" controversy is not barred, even though the matter is unambiguously referred to in articles published in 1972 by former Special Agent Robert Wall, and four of the plaintiffs admit that they read the articles or, in the case of plaintiff Waskow, spoke with Robert Wall in 1971 and 1972.*/ They somehow assert that plaintiff Waskow was not aware of Wall's disclosure regarding the "head-tax" issue. This assertion has no factual support and is, in any event, irrelevant, since plaintiff Waskow could have failed to know about the issue only by intentionally avoiding it. In addition, plaintiffs assert that the information from Wall was insufficient for intelligent investigation and prosecution because Defendant Webster's Response to Plaintiff's Tenth Set of Interrogatories, Response No. 1, filed March 9, 1981, did not confirm one particular detail of Wall's rendition of the event. Wall had claimed that a letter regarding the "head-tax" issue was sent by the FBI, anonymously, to certain persons involved in the controversy. The files of the FBI do not confirm this allegation; however, on the basis of the Wall allegation, plaintiffs have alleged wrongdoing by the federal defendants, they have obtained documents relating to the "head-tax" issue and the FBI's discussion of it, and they have pursued the cause of action. The fact that Robert Wall's description was incomplete and not entirely accurate does not mean that plaintiffs were not put on notice of a potential cause of action, and, in fact, plaintiffs admit that the information provided by Wall in 1972 was the very basis for filing suit in 1976.

*/ See exhibits attached to Federal Defendants' Motion for Judgment on the Pleadings and depositions of plaintiffs: Bloom, at 36-41; Abbott, at 7; Booker, at 32-33; Waskow, at 26.

5. Plaintiffs aver that one type of overt, as opposed to concealed, act occurred, viz., interviews conducted for the purpose of intimidation.*/ They contend, however, that this act did not become actionable until they discovered the underlying illicit motive. Although intimidation would normally be immediately apparent to the victim, plaintiffs claim that they did not realize the intimidation until several years later. To put it charitably, this assertion lacks credibility.

6. Finally, plaintiffs frequently state that until the Freedom of Information Act was amended in 1974 they did not have the tools to discover the facts material to their claims. (Plaintiffs' Memorandum, at 20-21.) The Freedom of Information Act was, of course, enacted in 1967,**/ and nothing prevented them from making a request. In fact, plaintiff Waskow did make a request in 1971. (The letter to the Justice Department from his attorneys includes the charge that he was being investigated because of his political activities. See Exhibit B.) Furthermore, nothing prevented them from commencing a civil action in 1973, alleging several categories of activities, contending the information was uniquely under the control of the defendants, and undertaking broad discovery to attempt to find a cause of action. Plaintiffs simply chose to wait until July 16, 1976, to commence such an action.

Conclusion

This action should be dismissed in that it is barred by the applicable statute of limitations.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

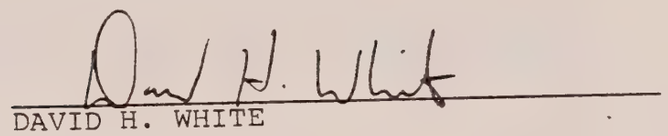
CHARLES F. C. RUFF
United States Attorney

---

*/ The Amended Complaint contains no allegations of interviews for purposes of intimidation. The Plaintiffs' Pretrial Brief was the first occasion that this kind of act was stated to be a cause of action. The Pretrial Brief does not describe or identify a single occasion in which a defendant conducted an interview for purposes of intimidation.

**/ 5 U.S.C. § 552; Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383; Pub. L. 90-23, 1, June 5, 1967, 81 Stat. 54.

BROOK HEDGE



DAVID H. WHITE

Attorneys, Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for Federal Defendants

WASHINGTON PEACE CENTER NEWSLETTER

OCTOBER-NOVEMBER 1975

2111 Florida Avenue N.W. Washington, Columbia 20008
Enter on Decatur Place (202) 234-2000

Action Planned On Break ins

Attorney David Rein has volunteered his help in suing for damages in the break ins and other illegal police state activities that occured during the height of the Peace Movement. Anne Pilsbury and other members of the D.C. Committee for the Bill of Rights will aid in the effort. Suspected victims include: Community Book Store, Washington Peace Action Council, Women's Strike for Peace, D.C.T.C., Black United Front and a number of individuals who suspect they may have been subject to wiretaps or who had their homes broken into. Many organizations will charge police with planting informants that encouraged acts (some violent) that the organizations did not want. If you think you (or your organization) was a victim of police or federal survailance, wiretapping, break ins, subversion etc. call David Rein at 628-4047 or Anne Pilsbury 628-4195 (days) or 543-4405 (nites). Its important many groups and people participate so that a strong case can be made. A fund raiser party will be held for the D.C. Committee for the Bill of Rights at the Echevarria's 2706 Olive Street in Georgetown Saturday November 1st at 8:00 P.M

9 ORGANIZATIONS WALK FOR PEAC

American Friends Service Committee, War R... sisters League, Catholic Peace Fellowship, Catholic Worker, Clergy & Laity Concerned Fellowship of Reconciliation, Sane, Women Strike for Peace and Women's International League for Peace & Freedom have formed The Continental Walk for Disarmament and Peace to push for unilateral action toward disarmament in order to help create a more decent and just society and to encourage cooperation among people working for peace, social change and sexual, racial and economic justice.

The walk should arrive here (it starts in San Francisco and ends in Washington) arou...

(con't on pg 3)

AMERICAN CIVIL LIBERTIES UNION

156 Fifth Avenue New York, N.Y. 10010 (212) 675-5990

October 29, 1971

RECEIVED

NOV 3 1971

Conference Control Unit
Internal Security Division

Hon. John N. Mitchell
Attorney General of the United States
Department of Justice
Washington, D.C.

Dear Sir:

We have been retained by Dr. Arthur I. Waskow, Resident Fellow of the Institute for Policy Studies, Washington, D.C., to obtain a file concerning him which has been prepared and is being maintained by the Internal Security Division of the Department of Justice.

Dr. Waskow believes that the Internal Security Division has collected, maintained and disseminated information concerning him solely because of his constitutionally protected activities as a well known opponent of the war being waged in Southeast Asia by the government of the United States. He has expressed his opposition to that war in a large number of publications, public statements and public speeches, all of which are activities protected by the First Amendment.

The records in the possession of the Internal Security Division pertaining to Dr. Waskow are clearly identifiable, within the meaning of Title 5, United States Code, Section 552(a)(3), and accordingly should be made promptly available to him. An example of the information contained in Dr. Waskow's file appears in a Department of Justice memorandum prepared some time prior to November 15, 1969. The memorandum was prepared ostensibly to assess "the potential for violence during the week-end of November 13-15 in Washington, D.C. in connection with the activities planned by the New Mobilization Committee to End the War in Vietnam." The memorandum contains the following paragraph about Dr. Waskow, a member of the New Mobilization steering committee:

146-200-38627
DEPARTMENT OF JUSTICE
26 NOV 3 1971

Edward J. Ennis, Chairman, Board of Directors • Ramsey Clark, Chairman, National Advisory Council
Aryeh Neier, Executive Director Legal Department: Melvin L. Wulf, Legal Director • Sanford Jay Rosen, Assistant Legal Director • Staff Counsel: Joel Gora • Lawrence Sager • Marilyn Hall • Michele Hermann

Civil Action
No. 76-1326

Exhibit B

> "Arthur Waskow is a Trustee and Resident Fellow of the Institute for Policy Studies in Washington, D.C. The Institute opposes the Vietnam war, the draft, the military community and supports the programs of the New Left and black extremists. Waskow himself advocates "creative disorder." In 1962 in Washington he met with a Russian intelligence officer attached to the Soviet Embassy, and in Switzerland with an official of the Polish Embassy." [Emphasis added.]

Dr. Waskow maintains that the statement that "[i]n 1962 in Washington he met with a Russian intelligence officer attached to the Soviet Embassy, and in Switzerland with an official of the Polish Embassy," is false. Since the maintenance and dissemination of such erroneous information by the Internal Security Division is extremely damaging to the reputation and security of our client, I hereby formally request, pursuant to Title 5, U.S.C., Section 552(a)(3), that you make promptly available to Dr. Waskow all dossiers, reports and information maintained by the Internal Security Division concerning his private, public and professional life so that he may review all such information.

I urge your prompt compliance with this formal request in accordance with the terms of Section 552(a)(3).

Yours sincerely,

Melvin L. Wulf
Legal Director

Ralph J. Temple
Ralph J. Temple
Legal Director
American Civil Liberties Union Fund

MLW:bg

American Civil Liberties Union Fund
Of The National Capital Area
SUITE 801 1424 16TH STREET, N.W.
WASHINGTON, D. C. 20036

Hon. John N. Mitchell
Attorney General of the
United States
Department of Justice
Washington, D.C. 20210

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	Civil Action No. 76-1326

ORDER

This matter having come before the Court on plaintiffs' motion for reconsideration, and this Court being advised in the premises, it is this _____ day of November, 1981,

ORDERED that the motion for reconsideration be, and hereby is, denied.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Memorandum By Federal Defendants In Opposition To Plaintiffs' "Motion For Reconsideration" And In Response To The Court's Order Of October 29, 1981.

Herb Semmel, Esquire
Urban Law Institute for the
Antioch School of Law
1524 Crescent Place, N.W.
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Norway, Maine 04268

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Daniel Schember, Esquire
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1712 N Streets, N.W.
Washington, D.C. 20036

David H. White

DAVID H. WHITE
Attorney, Department of Justice
Washington, D.C. 20530

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., :

:

v. : Civil Action No. 76-1[illegible]

[illegible], et al., :

Defendants :

RESPONSE OF THE DISTRICT OF COLUMBIA DEFENDANTS TO PLAINTIFFS MEMORANDUM REGARDING FRAUDULENT CONCEALMENT.

On October 29, 1981 this court issued a memorandum order directing the parties inter alia, to brief the question of whether plaintiffs are entitled to the benefit of the doctrine fraudulent or deliberate concealment in order to suspend the running of the statute of limitations. While the District of Columbia defendants did not formally join in the motion filed by the federal defendants regarding the statute of limitations, the District of Columbia defendants did raise a statute of limitations defense in their answers to the complaint and in their pretrial brief. Since the statute of limitations argument made by the federal defendants applies indirectly to the District of Columbia defendants, it is appropriate for these defendants to respond to plaintiffs' recently filed memorandum on the question.

The acts in which the plaintiffs have based their suit occurred in the years 1968 to 1971. Plaintiffs filed this suit on July 16, 1976, and it alleges no specific acts committed by the defendants subsequent to 1971. Since there is no federal statute of limitations to the alleged acts committed by the defendants, it has been held that the local statute most analogous to the acts alleged herein is applicable. Accordingly, this court has held that the three year period established by D.C. Code, [illegible] is the applicable period to this action. Thus, absent some tolling of the statute, plaintiffs' suit must be barred by the statute of limitation

since the filing date is more than three years after the last alleged act committed by the defendants.

In this regard, plaintiffs assert that they are entitled to the benefit of the doctrine of fraudulent or deliberate concealment, which would suspend the running of the limitations period, thereby allowing them to maintain this suit. The United States Court of Appeals for the District of Columbia has established principles governing the application of that doctrine for actions involving alleged covert governmental wrongdoing. In Fitzgerald v. Seamans, 180 U.S. App. D.C.75,83 553 F2d 220, 228 (1977) that Court stated

> -----in the case of defendant's fraud or deliberate concealment of material facts relating to his wrongdoing, time does not begin to run until plaintiff discovers, or by reasonable diligence could have discovered, the basis of the lawsuit.

See also Smith v. Nixon, 196 U.S. App. D.C. 276, 606 F2d 1183 (1979).

To avail themselves of this doctrine, plaintiffs must plead and establish three elements: (1) wrongful concealment by the party asserting the statute of limitations defense, (2) plaintiff's failure to discover the operative facts forming the basis of his cause of action during the limitations period, and that this failure to discover occur. (3) despite the exercise of due diligence. General Aircraft Corp. v. Air America,482 F. Supp. 3,8 (D.D.C. 1979). citing Charlotte Telecasters, Inc. v. Jefferson Palot Corp. 546 F2d 570, 574 (4thcir. 1976), Dayco Corp. v. Goodyear Tire & Rubber Co. 523 F2d 389, 394 (6thcir. 1975).

Perforce, the second and third elements are im material until and unless the plaintiff establish fraudulent or deliberate concealment. As stated in Hall v. Bryce Mountain Resorts, Inc. 379 F. Supp. 165, 169-170 (W. D. Va. 1974.

> ---Mere ignorance or lack of knowledge on the part of the plaintiffs is not sufficient to suspend the operation of the statute.
> ---There would of neccessity have to have been defendants, designed to conceal the existence of liability and to engage in some way upon the plaintiffs to prevent or delay the bringing of the suit. Mere silence by defendants absent any fraudulent acts or representations, is not such concealment as would prevent runaway of the statute.

See also General Aircraft Corp. v. Air America, supra, Public Service Co. of New Mexico v. General Electric Co. 315 F2d 306 (10th Cir. 1963). Cert. denied 374 U.S. 809, 835. Ct. 1695, 10 L. Ed 2d 1033 (1963); Peck v. United States, 470 F. Supp. 1003 (S.D. N.Y. 1973.)

Peck supra, is particularly instructive because it involves allegations of violations of plaintiff's constitutional rights based on federal agents' alleged failure to interfere in a conspiracy between local law enforcement officials and vigilantes despite knowing of the conspiracy through the use of informants. The court in Peck, citing Fitzgerald v. Seamans supra, held that the "due diligence discovery" rule is applicable only where the United States has deliberately concealed its acts so as to prevent plaintiff from becoming aware of their existence. But see Hammond v. United States, 388 F. Supp. 928 (E.D. N.Y. 1955)

Plaintiff's seek to invoke the due diligence discovery rule by asserting that covert governmental actions are per se fraudulent or deliberate concealment, i.e., that the vary nature of the defendants acts entitled them to claim the benefit of the "due diligence-discovery "rule. Examination of the cases involving covert governmental action reveals that more is needed.

[1]Although the "due diligence-discovery" rule may also be applied where plaintiff can show that its injury was"inherently unknowable" during the running of the statute, plaintiffs do not rely on such a theory in the case at bar. Quinton v. United States, 304 F2d 234 (5th Cir. 1962).

In Peck, supra, plaintiffs alleged that the concealment was supported by a document that other defendants had instructed the informant to lie about his participation in alleged misconduct. Further, the Untied States had sought an injunction based upon the events in questions, but did not reveal its role or the role of the individual defendants, or that of the informant. Additionally, plaintiffs in Peck asserted that the informant had perjured himself and that the other defendants did not speak out. Even these allegations were found by the court to be insufficient to constitute fraudulent or deliberate concealment, legally or factually. Peck supra at p. 1018,1019. The court, however, did not dismiss the action because it was possible that additional facts could be elicited to support the assertion of concealment through later discovery.

In Smith v. Nixon, supra, plaintiff was the victim of a wire tap which the court found to be, "by nature secret". The court also found that extraordinary effortswere undertaken to conceal the surveilance program. The court noted, in footnote 44:

> Appellants charge fraudulent concealment in appellees failure to inform Justice Department officials of the existence of the wire tap records, which were relevent to the criminal prosecution in United States v. Ellsberg and Russo No. 9373 (C.D. Cal. 1971) and in the incorrect denial of 1973 press reports of the wiretapping program. Such affirmative acts according to Fitzgerald v. Seamans, supra atte 40, 180 U.S. App. D.C. at 83, 553 F2d at 228, would provide the "aggravation" needed to bring this case within the traditional view that the statute of limitations is tolled when there has been fraudulent concealment or the injury that would serve as the basis for legal actions. See Holmberg v. Armbrecht, 327 U.S. 392,396-397 66 S. Ct. 582, 90 L. Ed. 743 (1946) (Emphasis added)

It was on that basis that the court reversed the dismissal and held that plaintiffs had alleged sufficient affirmative acts to entitle them to the benefit of the due diligence discovery rule.

In Fitzgerald v. Seamans, supra, the court applied the due diligence-discovery rule, stating at page 228.

> We think it appropriate to apply the discovery diligence standard to this case where appelent alleges there was a conpiracy to terminate his government service in retaliation for his congressional testimony, and to conceal this by making false accusations to be smirch his reputation by perpertrating the termination in the guise of a reduction inforce. In the particular case, there is the "aggravation" that appellant has been impeded in exploring the circumstances of his dismissal and its after math by invocation of governmental secrecy ---and the invocation of executive privilege----

Plaintiffs assert in their complaint that the D.C. defendants attempted to conceal their wrong doing by destroying the files maintained by the Intelligence Division of the Metropolitan Police Department. Plaintiffs argue, as they must, that said destruction constitutes fraudulent or deliberate concealment of material facts. Such an assertian is unavailing for several reasons.

Factually, the destruction of files was part of an ongoing and routine weeding out of redundant and out dated material, which stemmed in part from a reorganization of the Intelligence Division. This weeding out process began, at the earliest, in March or April of 1974 and continued until 1975. (Answer of Defendants District of Columbia, Zink and Zanders to Plaintiffs Interrogatories. Answer 3. See also Transcript of Deposition of Robert L. Zink, pp. 6,11,12.) There is no competent evidence to ascribe any improper motive to the throwing away of old files. Accordingly, the mere assertion or suspicioun that the purging of Intelligence Division files was done for purposes of concealing information can not support a conclusion that this weeding out process was a fraudulent or deliberate act designed to frustrate plaintiffs'ability to gain information.

See Peck, supra at p. 1019. If government agencies did not go through this normal process of throwing away outdated materials, there would soon be no room for anything but old useless files.

Even assuming, the throwing away of old files was done to conceal information, the statute of limitaitons would not be tolled in the case at bar because this weeding out process began more than three years after the date of the last significant act of wrongdoing allegedly commited by the District of Columbia Defendants against the named plaintiffs. Although Plaintiffs allege that the relevant period in this action was 1967 to 1974, plaintiffs can point to no specfic act by the District defendants subsequent to 1971. For example the entry into 1029 Vermont Avenue, N.W. allegedly took place in about May of 1970. The three year statute therefore expired in May of 1973, well before the throwing away of any arguably relevant police files.

In the case at bar. the record is devoid of any other affiemative acts by the District defendants which could serve as the "agggavation" explicitly required for tolling of the statute of limitation in cases of alleged covert governmental misconduct. To allow plaintiffs to invoke the discovery diligence standard based merely upon their suspicioun of governmental misconduct would dramatically alter that doctrine and would open a Pandora's box of stale claims.

Nevertheless, even if plaintiffs could satisfy the first criterion of the three-pronged test for application of the discovery-diligence doctrine (i.e. even if they could establish deliberate or fraudulent concealment the statute of limitations would not be tolled since a number of plaintiffs were aware of surveillance activities more than three years before they filed the instant lawsuit. (e.g. Plaintiffs Booker and Abbott knew that defendant Bynum was an MPD DC undercover officer. Thus, plaintiffs cannot claim that, despite due diligence, they failed to discover sufficient facts during the limitations period.

General Aircraft Corp. v. Air America, supra.

In summary, this lawsuit is barred by the running of the applicable statute of limitation and should be dismissed.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum of Defendants District of Columbia was hand delivered to Daniel M. Schember, Esq., Attorney for Plaintiffs, 1712 N. Street, N.W., Washington, D.C. 20036; and David White, Esq., Attorney for Federal Defendants, Department of Justice, Washington, D.C. 20530, this 13 Day of November, 1981.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

OPPOSITION TO MOTION BY
FEDERAL DEFENDANTS TO STRIKE PORTIONS OF
PLAINTIFFS' PRETRIAL BRIEF

The federal defendants have moved to strike six paragraphs of plaintiffs' pretrial brief. Defendants have divided the six paragraphs into three groups and offer various arguments applicable to each group. The paragraphs below respond to defendants' objection to each group and discuss the applicable case law.

Paragraphs A.3.d. and A.3.f.

These paragraphs concern anonymous FBI COINTELPRO leaflets either ridiculing the 1969 counterinaugural demonstrations or attempting to sow tension among members of the New Mobilization Committee (NMC) Steering Committee, which included plaintiffs Waskow and Bloom.

Defendants claim that these events were not described in the complaint or plaintiffs' interrogatory answers, that documents pertinent to these events were published with the staff reports of the Church Committee and another book published in 1975, and that defendant Brennan has been prejudiced because he undertook no discovery regarding these events.

Paragraphs 27 and 28 of plaintiffs' complaint, however, allege "supplying the public and/or news media with false information about the plaintiffs." Paragraph 30 of the original complaint refers to disruption of plaintiffs' activities under COINTELPRO, and plaintiffs Bloom and Waskow have repeatedly informed the FBI defendants of their NMC affiliations, which also appear prominently in their FBI files.

Defendant Brennan has not been prejudiced in his ability to defend against plaintiffs' claims concerning these leaflets. There is nothing surprising about the evidence plaintiffs will present. Plaintiffs Bloom and Waskow will testify that they were on the Steering Committee of the NMC and plaintiffs will introduce in evidence the anonymous leaflets and FBI memoranda indicating their source as the FBI's Counterintelligence Program. Defendants will then be free to offer evidence explaining or justifying their acts. The facts regarding these leaflets are not complicated, or even disputed, and defendants are not prejudiced by their inclusion in the case.

Paragraph A.3.1.

This paragraph concerns the use of FBI agent interviews for purposes of intimidation or recruiting informants. Defendants claim this allegation has not been mentioned before and that no details are provided which would enable defendants to prepare for trial.

Paragraphs 25 and 28 of plaintiffs' original complaint alleged direct FBI agent involvement in surveillance of plaintiffs, and in their depositions and responses to the federal defendants' first set of interrogatories several plaintiffs referred to surveillance in the form of FBI agent interviews. See plaintiff Booker's first interrogatory responses at 7 and deposition at 75-76; plaintiff Waskow's deposition at 27-28; and plaintiff Pollock's deposition at 25-26.

Again, there is nothing surprising or mysterious about the evidence plaintiffs will offer. Plaintiffs and witnesses will testify that they were interviewed by FBI agents. Defendant Pangburn and his former associate John T. Aldhizer will be examined concerning their practice of interviewing political activists, and plaintiffs will introduce in evidence FBI memoranda indicating that interviews for purposes of intimidation were a COINTELPRO tactic. Defendants and their witnesses will then be

free to explain any legitimate bases for their acts. There is no prejudice to defendants in having these facts included within plaintiffs' case.

Paragraphs A.3.h., A.3.i., and A.3.j.

These paragraphs concern defendants' conduct of unauthorized, overbroad domestic intelligence investigations as part of their efforts to disrupt and counteract plaintiffs' constitutionally protected activities. There can be no doubt that this claim always has been central to plaintiffs' case. In their motion to strike defendants claim ignorance of the events, times, places, and persons involved in this claim. Essentially, defendants have repackaged their argument regarding the adequacy of plaintiffs' complaint under Rule 8, Federal Rules of Civil Procedure, and presented it in the form of a motion to strike.

In reality, the events, times, places, and persons involved in plaintiffs' claims of illegal surveillance are well known to the FBI defendants, and there is nothing surprising in the proof plaintiffs will offer. Nearly all aspects of this claim will be established by FBI documents and the Church Committee findings. Plaintiffs will introduce Counterintelligence Program memoranda indicating the role of domestic intelligence investigations in that program. Exerpts from the FBI files on plaintiffs will be introduced, indicating they were the targets of domestic intelligence investigations. Plaintiffs maintain these documents show the investigations were excessive in light of what the documents reveal the FBI knew of plaintiffs' nonviolent character. The findings of the Church Committee concerning the overbreadth of FBI domestic intelligence investigations will be offered as further support of plaintiffs' claims.

Defendants will have every opportunity to justify their investigations. The events, times, places, and persons involved are fully stated in plaintiffs' FBI files, the undeleted versions of which are in defendants' exclusive possession. Defendants'

claim of surprise seems disingenuous. Every detail has been in their possession since the day it was first recorded in FBI files. A catalog listing each event mentioned in the thousands of pages of these files is not necessary to apprise defendants of plaintiffs' claim.

The lone case cited by defendants, United States v. Proctor & Gamble, 356 U.S. 677 (1958), concerned the discoverability of grand jury transcripts and provides no support for defendants' motion to strike. Applicable case law requires denial of the motion. Manbeck v. Ostrowski, 128 U.S.App.D.C. 1, 384 F.2d 970 (1967) (error to preclude defense from trial solely because it was not mentioned at pretrial conference).

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

ORDER

This matter having come before the Court on motion by the federal defendants to strike portions of plaintiffs' pretrial brief, and plaintiffs' opposition thereto, and it appearing that this motion should be denied, it is this _____ day of November, 1981

ORDERED that defendants' motion is denied.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Oppostion to Motion by Federal Defendants to Strike Portions of Plaintiffs' Pretrial Brief and proposed Order was personnaly served this 13th day of November, 1981 on David White, Counsel for federal defendants and Laura Bonn, Counsel for District of Columbia defendants.

Daniel M. Schember

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

PLAINTIFFS' STATEMENT REGARDING DEFENDANTS' EXHIBITS

FBI Defendants' Exhibits

Plaintiffs will not object to the introduction in evidence of the official Justice Department and FBI documents indicated as exhibits 1-12, 14, and 17, provided defendants do not object to plaintiffs' introduction of Justice Department and FBI documents referenced in plaintiffs' pretrial brief.

Plaintiffs object to federal defendants' exhibit 13, three sections from the FBI Manual of Instruction, unless plaintiffs will be allowed to introduce those sections as well as more current Department of Justice and FBI guidelines governing similar subjects. The FBI manual sections constituting defendants' exhibit 13 were provided to plaintiffs under a protective order which precluded plaintiffs from introducing this material in open court. This order remains in effect at this time. It would be manifestly unfair to preclude plaintiffs from introducing these materials while defendants are allowed to use them as part of their case. Furthermore, plaintiffs' decision not to list more current guidelines as exhibits was based on the assumption that the earlier guidelines would remain secret.

Plaintiffs object to federal defendants' exhibits 15 and 16, speeches by the former Attorney General on the ground these exhibits are hearsay. Plaintiffs have not yet been afforded opportunity to review these exhibits and will reconsider their objection if defendants demonstrate a purpose for their admission other than proving the truth of the matters asserted in the speeches.

Plaintiffs do not object to the admission in evidence of federal defendants' exhibits 18 and 19, articles written by Robert Wall.

Plaintiffs have not yet had opportunity to review defendants' exhibits 20 and 21, a newspaper article and interrogatory answers in Institute for Policy Studies v. Mitchell, respectively. These exhibits are objected to at this time on the ground that they are hearsay. Plaintiffs will reconsider their objection after opportunity to review the exhibits and upon demonstration by defendants of a basis for their admissibility.

D.C. Defendants' Exhibits

Plaintiffs do not object to the admission of D.C. defendants' exhibits 1-4, Metropolitan Police Department General Orders.

Respectfully submitted,

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Certificate of Service

I certify that a copy of the foregoing Plaintiffs' Statement Regarding Defendants' Exhibits was personally served this 13th day of November, 1981, on David White, Counsel for the FBI defendants, and Laura Bonn, Counsel for the District of Columbia defendants.

Daniel M. Schember

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MOTION IN LIMINE

Plaintiffs move the Court for an order instructing all defendants to refrain absolutely from introducing any evidence on, or making any direct or indirect reference in person, through counsel, or through witnesses to, any plaintiff's past membership in, or association with, the Communist Party of the United States of America.

The grounds for plaintiffs' motion are set forth in the attached memorandum.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION IN LIMINE

As is known to the federal defendants, and evidenced by information contained in FBI files, some plaintiffs in this proceeding at one time participated in the First Amendment activities of the Communist Party of the United States of America ("CP"). The plaintiffs, however, ceased these activities and any party affiliation long before the period relevant to this litigation. Plaintiffs, by the instant motion, seek to avoid the prejudice which would result from any reference at trial to their prior CP affiliation by having the court issue a pretrial order precluding such references.

Plaintiffs' prior CP membership is clearly the type of evidence contemplated for exclusion under Rule 403 of the Federal Rules of Evidence. This rule states that, even where evidence may be relevant, it may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Since plaintiffs were not affiliated with the CP during the period relevant to this complaint, nor had they been for years previously, the relevance of their prior affiliation to any issue in this proceeding is arguably nil and, at best, slight. "If the relevance of the proffered evidence is suspect or slight, but would likely be prejudicial, than any justification for its admission is slight or non-existent." Moore's Federal Practice §403.02. In contrast to its probative values the danger of unfair prejudice is great.

Given the history of controversy and suspicion which surrounds the CP in this country, association of a party at trial with the CP could be expected to inflame a jury's prejudices. Indeed, Judge Weinstein, in his evidence treatise, speaks of the "undoubted resulting prejudice" caused by evidence which "connects [a] party with a highly charged issue, such as Communism or organized crime." Weinstein's Evidence §403[3]. In United States v. Turoff, 291 F.2d 864 (2d Cir. 1961) (prosecution for refusal to testify before House Un-American Acticities Committee), cited by Weinstein, the court considered it "evident" that one presented as a communist "conspirator" through his prior admission of CP membership, "is disadvantaged in a jury trial," despite any later charge by the trial judge to the jury not to concern itself with "whether these defendants were or were not communists." The prejudicial damage flowing from admission of such evidence "could not be thereby undone." Id. at 868.

The balancing of probative value against the danger of unfair prejudice thus clearly calls for exclusion of plaintiffs' prior CP affiliation under Rule 403. However, to delay a ruling on this issue until a formal offer of evidence on this matter is made at trial risks the danger that reference to CP affiliation either in passing or during the offer, will awaken the prejudices and suspicions of the jury on this inflammatory issue. Once this is done, to paraphrase the court in Turoff, it cannot be undone by any later instructions or rulings of the court. Therefore, a pretrial order against any reference to plaintiffs' prior CP affiliation is necessary and appropriate.

Rulings upon admissibility of evidence prior to trial are permitted under the authority granted the court by Rule 16(6) of the Federal Rules of Civil Procedure. See Moore's Federal Practice ¶16.16. One critical purpose of excluding evidence before trial is to avoid "any prejudicial effect. . . allusions to or partial introduction of inadmissible evidence may cause" in front of a jury. Comment, The Evidence Ruling at Pre-Trial in the

Federal Courts, 54 Cal. L. Rev. 1016, 1029 (1966). The prophylactic benefit of a pre-trial ruling excluding evidence where, as here, there is so great a likelihood of prejudice otherwise resulting, leaves little reason to delay such rulings for trial.

For these reasons, plaintiffs' motion should be granted.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

ORDER

This matter having come before the Court on plaintiffs' Motion In Limine, and it appearing this motion should be granted, it is this _____ day of November, 1981

ORDERED as follows:

(1) all defendants shall refrain absolutely from introducing any evidence on, or making any direct or indirect reference whatsoever, in person, through counsel, or through witnesses to, past membership or affiliation of any plaintiffs in the Communist Party; and

(2) should any questions regarding this order arise during the course of trial, defendants shall raise such questions outside the hearing of the jury.

_____
UNITED STATES DISTRICT JUDGE

Certificate of Service

I certify that a copy of the foregoing Motion in Limine, accompanying memorandum, and proposed order was personally served on David White, Civil Division, Department of Justice, Washington, D.C. 20530 and Laura Bonn, Assistant Corporation Counsel, District Building, 14th & E Streets, N.W., Washington, D.C. 20004, this 16th day of November, 1981.

Daniel M Schember

Daniel M. Schember

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

PLAINTIFFS' LIST OF EXHIBITS

1. Letter from Director FBI to S.A.C., Albany, August 25, 1967.
2. Memorandum from G. C. Moore to W. C. Sullivan, February 29, 1968, and attached airtel from Director FBI to S.A.C., Albany, March 4, 1968.
3. Memorandum from C. D. Brennan to W. C. Sullivan, May 9, 1968, and attached letter from Director FBI to S.A.C., Albany, May 10, 1968.
4. Excerpts from Book II, Final Report of the Select Committee to Study Governmental Operations With Respect to Intelligence Activities, Senate Report No. 94-755, 94th Congress, Second Session, April 26, 1976.
5. Memorandum from S.A.C., WFO, to Director FBI, August 4, 1969.
6. Memorandum from S.A.C., WFO, to Director FBI, June 26, 1970.
7. Memorandum from G. C. Moore to C. D. Brennan, August 20, 1970 and attached New York Times article.
8. Airtel from Director FBI to S.A.C., Baltimore, September 9, 1970.
9. Memorandum from S.A.C., WFO, to Director FBI, September 23, 1970.
10. Memorandum from G. C. Moore to W. C. Sullivan, March 26, 1968, with attachment.

11. Memorandum from G. C. Moore to W. C. Sullivan, May 14, 1968, with attachment.
12. Memorandum from G. C. Moore to W. C. Sullivan, June 5, 1968, with attachment.
13. Airtel from S.A.C., WFO, to Director FBI, January 9, 1969, with attachment.
14. Airtel from Director FBI to S.A.C., WFO, January 10, 1969.
15. Airtel from S.A.C., WFO, to Director FBI, January 21, 1969.
16. Memorandum from S. A. Wilfred R. Schlarman to S.A.C., WFO, January 21, 1969.
17. Letter from Rev. Moore to Abraham Bloom, undated, with attachment.
18. Airtel from Director FBI to S.A.C., Chicago, August 21, 1969.
19. Airtel from S.A.C., WFO, to Director FBI, August 22, 1969.
20. Airtel from S.A.C., WFO, to Director FBI, September 24, 1969.
21. Airtel from S.A.C., WFO, to Director FBI, October 1, 1969, with two attachments.
22. Airtel from S.A.C., WFO, to Director FBI, October 10, 1969.
23. Memorandum from S.A.C., New York, to Director FBI, October 10, 1969, with attachment.
24. Memorandum from Director FBI to S.A.C., New York, October 15, 1969.
25. Memorandum from S.A.C., New York, to S.A.C., WFO, October 24, 1969.
26. Memorandum from C. D. Brennan to W. C. Sullivan, September 5, 1969, with attachment.
27. Memorandum from S.A.C., WFO, to Director FBI, October 9, 1969, with attachment.
28. Memorandum from S.A.C., WFO, to Director FBI, October 24, 1969
29. Memorandum from Director FBI to S.A.C., WFO, November 3, 1969.

30. Memorandum from S.A.C., WFO, to Director FBI, December 4, 1969.
31. Memorandum from S.A.C., New York, to Director FBI, February 3, 1970, and attachment.
32. Memorandum from S.A.C., New York, to Director FBI, January 21, 1969, and attachment.
33. Memorandum from Director FBI to S.A.C., New York, January 24, 1969.
34. Memorandum from S.A.C., New York, to Director FBI, March 14, 1969, and attachment.
35. Memorandum from Director FBI to S.A.C., WFO, October 16, 1968.
36. Memorandum from C. D. Brennan to W. C. Sullivan, April 27, 1971, and attached airtel from Director FBI to S.A.C., Albany, April 28, 1971.
37. Memorandum from S.A.C., WFO, to Director FBI, September 7, 1967.
38. Airtel from S.A.C., WFO, to Director FBI, November 7, 1968.
39. Memorandum from S.A.C., WFO, to Director FBI, November 18, 1968.
40. Airtel from S.A.C., WFO, to Director FBI, December 13, 1968, and attachment.
41. Memorandum from S.A.C., WFO, to Director FBI, February 10, 1969, and attachment.
42. Memorandum from S.A.C., WFO, to Director FBI, March 20, 1969.
43. Airtel from S.A.C., WFO, to Director FBI, April 11, 1969.
44. Airtel from S.A.C., WFO, to Director FBI, May 9, 1969, and two attachments.
45. ELSUR Cards: Sam Abbott, July 4, 1970; Abe Bloom, September 18, 1970; Reginald Booker, November 19, 1970; David Eaton, October 2, 1970; Richard Pollock, April 20, 1971; Arthur Waskow, April 22, 1971.

46. Memorandum from S.A.C., WFO, to Director FBI, May 5, 1970.
47. Memorandum from G. C. Moore to W. C. Sullivan, May 20, 1970.
48. Memorandum from W. C. Patterson to G. C. Moore, May 25, 1970, and attached FBI memorandum for the Attorney General, May 21, 1970.
49. Memorandum from S.A.C., WFO, to Director FBI, August 17, 1970.
50. Memorandum from G. C. Moore to C. D. Brennan, August 19, 1970.
51. Memorandum from W. C. Patterson to G. C. Moore, August 20, 1970, and attached FBI memorandum for the Attorney General, August 19, 1970.
52. Memorandum from S.A.C., WFO, to Director FBI, March 19, 1971.
53. Airtel from Director FBI to S.A.C., WFO, April 1, 1971.
54. Memorandum from A. W. Gray to C. D. Brennan, March 28, 1971, with attached FBI memorandum for the Attorney General, March 30, 1971.
55. Memorandum from R. L. Pence to A. W. Gray, April 1, 1971, and attached FBI memorandum for the Attorney General, March 30, 1971.
56. Memorandum from S.A.C., WFO, to Director FBI, April 5, 1971.
57. Memorandum from John Edgar Hoover to the Attorney General, April 7, 1971.
58. Memorandum from S.A.C., WFO, to Director FBI, April 22, 1971.
59. Airtel from Director FBI to S.A.C., WFO, May 3, 1971.
60. Memorandum from R. L. Pence to A. W. Gray, May 5, 1971, and attached FBI memorandum for the Attorney General, April 29, 1971.
61. Memorandum from John Edgar Hoover to the Attorney General, May 17, 1971.
62. Airtel from S.A.C., WFO, to Director FBI, May 13, 1971.
63. FBI notations from telephone surveillance of Black Panther

Party and Sam Abbott, July 4, 1970.

64. FBI notations from telephone surveillance of Black Panther Party and Abe Bloom, September 18, 1970.

65. FBI notations of telephone surveillance of Black Panther Party and David Eaton, October 2, 1970.

66. FBI notations of telephone surveillance of Black Panther Party and Reginald Booker, November 19, 1970.

67. FBI notations from electronic surveillance of People's Coalition for Peace and Justice and Richard Pollock, April 20, 1971.

68. FBI notations from telephone surveillance of People's Coalition for Peace and Justice and Arthur Waskow, April 22, 1971.

69. Airtel from S.A.C., WFO, to Director FBI, July 17, 1970, and attachment.

70. Memorandum from S.A.C., WFO, to Director FBI, December 15, 1970.

71. Teletype from S.A.C., WFO, to Director FBI, October 21, 1969.

72. Memorandum from Chief of Police to Mayor Walter E. Washington, March 7, 1975 and attachments A-M.

73. Memorandum from Chief of Police to Mayor Walter E. Washington, May 1, 1975.

74. Metropolitan Police Department General Order 304.11, August 1, 1976.

75. Sections 87, 107, 122 of the FBI Manual of Instruction, effective 1967 to 1974.

76. Department of Justice, FBI Guidelines for Domestic Security Investigations, 1976.

77. Department of Justice, Attorney General's Guidelines on FBI Undercover Operations, January 5, 1981.

78. Comptroller General of the United States, Report to the House Committee on the Judiciary, FBI Domestic Intelligence Operations, February 24, 1976.

79. Comptroller General of the United States, Report, FBI Domestic Intelligence Operations, November 9, 1977.
80. Memorandum from C.D. Brennan to W.C. Sullivan, April 30, 1968.
81. Excerpt from SAC Letter 68-21, April 2, 1968.
82. Airtel from Director, FBI to S.A.C., Albany October 28, 1968 and attachment.
83. Memorandum from C.D. Brennan to W.C. Sullivan, March 12, 1970 and attached airtel from Director, FBI to S.A.C., Albany, March 16, 1970.
84. Memorandum from S.A.C. Chicago to Director, FBI, August 7, 1969.
85. Excerpts from Report, White House Conference on Youth (1970).
86. Incident Summaries from Winkelman investigation of Metropolitan Police Department Intelligence Division activities.
87. Excerpts from transcript of interview of Joseph A. Mahoney November 6, 1975.
88. Statements and deposition of Charles J. Marcum from Winkelman investigation.
89. Statements of Charles Robinson from Winkelman investigation.
90. Statements of Edward Spiker from Winkelman investigation.
91. Statements of Thomas Okeson from Winkelman investigation.
92. Statements of George Awkward from Winkelman investigation.
93. Report material from Winkelman investigation.
94. Excerpts from Report to the President by the Commission on CIA Activities within the United States, June 1975.
95. Excerpts from FBI files concerning Sam Abbott.
96. Excerpts from FBI files concerning Abe Bloom.
97. Excerpts from FBI files concerning Reginald Booker.
98. Excerpts from FBI files concerning David Eaton.
99. Excerpts from FBI files concerning Tina Hobson.
100. Excerpts from FBI files concerning Richard Pollock.
101. Excerpts from FBI files concerning Washington Area Women Strike for Peace.

102. Excerpts from FBI files concerning Washington Peace Center.

103. Excerpts from FBI files concerning Arthur Waskow.

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Attorneys for Plaintiffs

Certificate of Service

I certify that a copy of the foregoing Exhibit List was personally served this 16th day of November, 1981 on David White, Counsel for the Federal Defendants, and Laura Bonn, Counsel for the District of Columbia Defendants.

Daniel M. Schember

Daniel M. Schember

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs,	)	
v.	)	Civil Action No. 76-1326
JERRY WILSON, et al., Defendants.	)	

LIST OF WITNESSES

The following are the witnesses that are most likely to be called by plaintiffs. Plaintiffs respectfully reserve the right to substitute witnesses on this list with witnesses from the witness list as submitted with plaintiffs' pretrial list.

Jack Acree

Sammie Abbott

John T. Aldhizer

Matt Andrea

William H. Bailey

The Honorable Marion Barry

C. Edward Behre

Barbara Bick

Delores Binsted

James Binsted

Abe Bloom

Reginald Booker

Randy Bregman

Charles Brennan

Edward Brooke

Richard S. Brooks

Harold Bynum

Donald Campbell

Mike Canfield

The Rev. John Carter

Charlie Cassells

Mel Kovacs

Carol Cullum

Blanco Drummond

The Rev. David Eaton

Gabriel Edgcomb

Harry G. Ervin

Carol Evans

Jan Fentey

Albert W. Ferguson

John Fleming

James Forman

John (Jan) Francis

Ann Gallivan

Dixie Gildon

Jerry Gordon

Gerald T. Grimaldi

Don Gurewitz

John Harding

Thomas Herlihy

Tina Hobson

Edward Jagen

Courtland Jones

Absalom Jordan

David Jordan

Victor Kaufman

Garrett Kirwin, Jr.

Bob Lamb

Sid Lens

Hannah Levin

Mark Looney

John B. Layton

Dorothy McGhee

John W. Mahaney

JoAnne Malone

Charles Marcum

Stewart Meachem

The Rev. Douglas Moore

George C. Moore

Philip Mostrom

Herman C. Oglesby

Gerould Pangburn

Sid Peck

Channing Philips

Ruth Pinkson

Richard P. Pollock

Fred Raines

Harlan Randolph

John Rees

Louise Rees

Pat Richards

Ellen Riger

John Rudder

Steve Sachs

Wilfred R. Schlarman

Christopher Scrapper

Robert L. Shackleford

Polly Shackelton

Peggy Shaker

Carl Shoffler

Betty Smallwood

Syd Stapleton

George R. Suter

Robert N. Torres

Bill Treanor

Edith Villastrigo

Robert Wall

Raymond Wannall

Arthur I. Waskow

Dagmar Wilson

Jerry V. Wilson

Melvin A. Winkleman

Ron Young

Theodore Zanders

John J. Zelloe

Robert L. Zink

Jane Doe

William H. Webster

Eric J. Wahl

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICES

I certify that a copy of the foregoing list of witnesses was served on David White, counsel for federal defendants and Laura Bonn, counsel for D.C. defendants this 16th day of November, 1981.

S. E. McNeil

J. E. McNeil

II. CONNECTIONS WITH THE COMMUNIST PARTY, USA (CP-USA)

On September 30, 1968, source learned that TIM WHEELER had been in touch with the national office of the CP in New York City regarding the possibility of having either one of the CP Presidential Candidates come to Washington, D. C. to speak. WHEELER was informed that CHARLENE MITCHELL, the CP Presidential candidate, would be available between the dates October 20-26, 1968. WHEELER planned to contact someone at Howard University and arrange a speaking engagement there.

Source further advised that [redacted] intended to "check" with SAM ABBOTT and one R. H. BOOKER, a Negro, concerning setting up MITCHELL's appearance. BOOKER was apparently chosen because he is a Negro and has wide contacts in the area.

ABBOTT is known to [redacted] as a person on whom he can rely regarding CP matters in the Washington, D. C. area.

Source advised that [redacted] is a member of the National Committee of the CP, USA, and Washington, D. C. Press Representative of the "Daily World", an East Coast Communist newspaper.

[redacted]

III. MISCELLANEOUS CIVIL RIGHTS AND ANTI-WAR ACTIVITIES

A. Emergency Committee on the Transportation Crisis (ECTC)

"The Washington Post and Times Herald" newspaper, Washington, D. C., in its issue of September 15, 1966, page B-1, under the caption, "Freeways Are Called Highways for Whites", described the ECTC as an anti-freeway group in Washington, D. C., headed by

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' SUPPLEMENTAL MEMORANDUM
IN RESPONSE TO ORDER
DATED OCTOBER 29, 1981

In this memorandum plaintiffs maintain (1) where the applicability of a statute of limitations depends on disputed issues of fact, those facts are for the jury to determine; (2) the New York Review of Books article by Robert Wall and plaintiffs' depositions, on which the federal defendants base their statute of limitations argument, were, in fact, before the court when it denied without prejudice defendants' motion to dismiss on statute of limitations grounds; and (3) the 1971 Freedom of Information request by plaintiff Waskow, included in exhibit A to plaintiffs' original memorandum responding to this court's October 29 order, did not manifest any knowledge of material facts pertinent to plaintiff Waskow's claims in this litigation.

Issues of Fact Concerning the Applicability of a Statute of Limitations are for the Jury to Resolve.

In Jones v. Rogers Memorial Hospital, 143 U.S.App.D.C. 51, 442 F.2d 775 (1971), the court reversed the district court's dismissal of a complaint on statute of limitations grounds and held, at n.2:

> The issue of when plaintiff's decedent discovered the injury, or through the exercise of reasonable diligence should have known of the facts giving rise to the claim, is properly one for the trier of fact, save for the exceptional case when it can be established that there is no material issue of fact.

The Robert Wall Article and Plaintiffs' Depositions Were Before the Court When It Denied in 1979 Defendants' Motion to Dismiss on Statute of Limitations Grounds.

In its memorandum of October 29, 1981 the court expressed uncertainty whether the article by Robert Wall and plaintiffs' depositions were before the court in November 1979 when the federal defendants' motion to dismiss on statute of limitations grounds was denied without prejudice. The record indicates they were. The New York Review of Books article by Robert Wall was attached as exhibit B to the federal defendants' memorandum in support of their motion to dismiss, filed April 2, 1979. Portions of plaintiffs' depositions pertinent to the statute of limitations issue were cited by the federal defendants in footnote 8 of their memorandum. The court's opinion November 9, 1979 held these facts insufficient to warrant dismissal of plaintiffs' claims on statute of limitations grounds.

Plaintiff Waskow's 1971 Freedom of Information Request Indicates No Knowledge of the Basis for the Claims Asserted in the Instant Litigation.

At the pretrial conference held November 13, 1981 plaintiffs referred to their Freedom of Information Act requests, stating these requests were made in 1974 or later. Counsel for the federal defendants stated that exhibit A to plaintiffs' memorandum responding to the court's October 29 order included a 1971 Freedom of Information Act request by plaintiff Waskow.

This request was not addressed to the FBI nor did it concern the subject matter of plaintiff Waskow's claims in this litigation. Plaintiff Waskow's 1971 request sought access to a file allegedly maintained by the Justice Department Internal Security Division. Plaintiff Waskow alleged in his request that this file contained false information alleging contacts by plaintiff with Russian and Polish embassy officials. A Justice Department memorandum dated February 16, 1972 stated that no Justice Department files contained any information concerning the allegations. Exhibit A, supra.

Respectfully submitted,

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Certificate of Service

I certify that a copy of the foregoing Plaintiffs' Supplemental Memorandum In Response To Order Dated October 29, 1981 was personally served this 16th day of November, 1981 on David White, Counsel for the Federal Defendants, and Laura Bonn, Counsel for the District of Columbia Defendants.

Daniel M. Schember

NOV. 1981

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	Civil Action No. 76-1326

RECEIVED NOV 9

RESPONSE BY FEDERAL DEFENDANTS
TO PLAINTIFFS' FIRST REQUEST FOR
ADMISSIONS, TO ALL FEDERAL DEFENDANTS

Defendants William H. Webster, Charles D. Brennan, George C. Moore, Courtland J. Jones, Gerould Pangburn, and Gerald Grimaldi, through their undersigned counsel and pursuant to Rule 36 of the Federal Rules of Civil Procedure, respond as follows to plaintiffs' first request for admissions.

Request

You are requested to admit that the person named Carlson in Exhibit 11 to the deposition of Donald Campbell would, if available at trial, testify as follows:

1. In the late 1960's and early 1970's I was a special employee, an informant, for the Metropolitan Police Department Intelligence Division.

Response

Counsel for federal defendants has conferred with counsel for the District of Columbia defendants regarding this request for admission. Counsel for the federal defendants has been advised that the District of Columbia defendants are objecting to this request inasmuch as it pertains to a matter which the District of Columbia defendants deem to be privileged. Accordingly, defendant Webster objects to the request subject to the objection of the District of Columbia defendants. Defendants Brennan, Moore, Jones, Grimaldi, and Pangburn lack knowledge or information sufficient to admit or deny this request, and they aver that they have made no inquiry regarding the matter inasmuch as it pertains uniquely to claims made by plaintiffs against the District of Columbia defendants.

Request

2. I was the partner of Charles J. Marcum, aka Mick Marcum, an undercover officer assigned to the Intelligence Division.

3. Charles J. Marcum and I were directed by our superiors, Christopher Scrapper, Jack Acree and George Suter, to infiltrate anti-Vietnam War organizations holding offices at 1029 Vermont Avenue, N.W., Washington, D.C.

4. Our instructions from Scrapper, Acree, and Suter were

a. to seek leadership positions, or positions of trust and responsibility, in those organizations;

b. to influence the decisionmaking of those organizations in ways desired by the Intelligence Division; and

c. to learn and report to the Intelligence Division;

i. the names of the leaders, members or associates of the organizations,

ii. the organizations' plans and activities,

iii. the political ideas expressed and decisions made at private organizational meetings, and

iv. the political beliefs and nonpolitical personal activities of persons active in those organizations, including all individual plaintiffs,

d. to steal or destroy property of the organizations in order to disrupt their activities; and

e. to sow tension and distrust among persons active in the organizations, in order to diminish their effectiveness.

5. Charles J. Marcum and I, working together, carried out all these instructions over a period of several years.

6. During the time I worked for the Intelligence Division I never received any information that any plaintiff or any organi-zation I infiltrated planned any violence at a demonstration or was involved in any way in any criminal activity.

7. In later 1969 or early 1970 defendants Scrapper, Acree, and Suter instructed Marcum and me to enter illegally in the night time an office at 1029 Vermont Avenue rented by an organization we had infiltrated, and to steal from a locked desk a locked metal box.

8. Scrapper, Acree, and Suter told us that the box contained information concerning the sources and uses of the organizations' funds, and that this information was desired by the FBI and the White House.

9. Marcum and I, working together, carred out these instructions and gave the metal box to Scrapper, Acree, and Suter.

Response

Federal defendants lack knowledge or information sufficient to admit or deny these requests, and they aver that they have made no inquiry regarding the matter inasmuch as they pertain uniquely to the claims made by plaintiffs against the District of Columbia defendants.

Request

10. Suter later told me he gave the contents of the box to FBI agent Gerald T. Grimaldi.

Response

Federal defendants Webster, Brennan, Jones, Moore, and Pangburn lack knowledge or information sufficient to admit or deny this request, and they aver that they have made no inquiry regarding the matter inasmuch as it pertains uniquely to the claims made by plaintiffs against the District of Columbia defendants and against defendant Grimaldi. Defendant Grimaldi denies that defendant Suter made any such statement and he further denies that defendant Suter gave him the contents of a box taken from 1029 Vermont Avenue by Charles Marcum.

Respectfully submitted,
J. PAUL McGRATH
Assistant Attorney General

CHARLES F. C. RUFF
United States Attorney

BROOK HEDGE

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November, 1981, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing RESPONSE BY FEDERAL DEFENDANTS TO PLAINTIFFS' FIRST REQUEST FOR ADMISSIONS, TO ALL FEDERAL DEFENDANTS.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 76-1326
	)	
JERRY V. WILSON, et al.,	)	
	)	
Defendants.	)	

NOTICE OF FILING

The transcripts of the following depositions were filed with the Court this 18th day of November, 1981:

Name	Date
Gerald T. Grimaldi	March 5, 1981
Robert L. Shackleford	July 28, 1981

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify the following Notice of Filing was hand delivered to David White, Counsel for Federal Defendants and Laura Bonn, Counsel for D.C. Defendants, this 18th day of November, 1981.

J. E. McNeil

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